

PENOLOGY IN INDIA

*Being a record of official proceedings, including
the addresses delivered and papers read, of the
First Indian Penal Reform Conference held in
the Convocation Hall, Bombay on February,
24 and 25, 1940*

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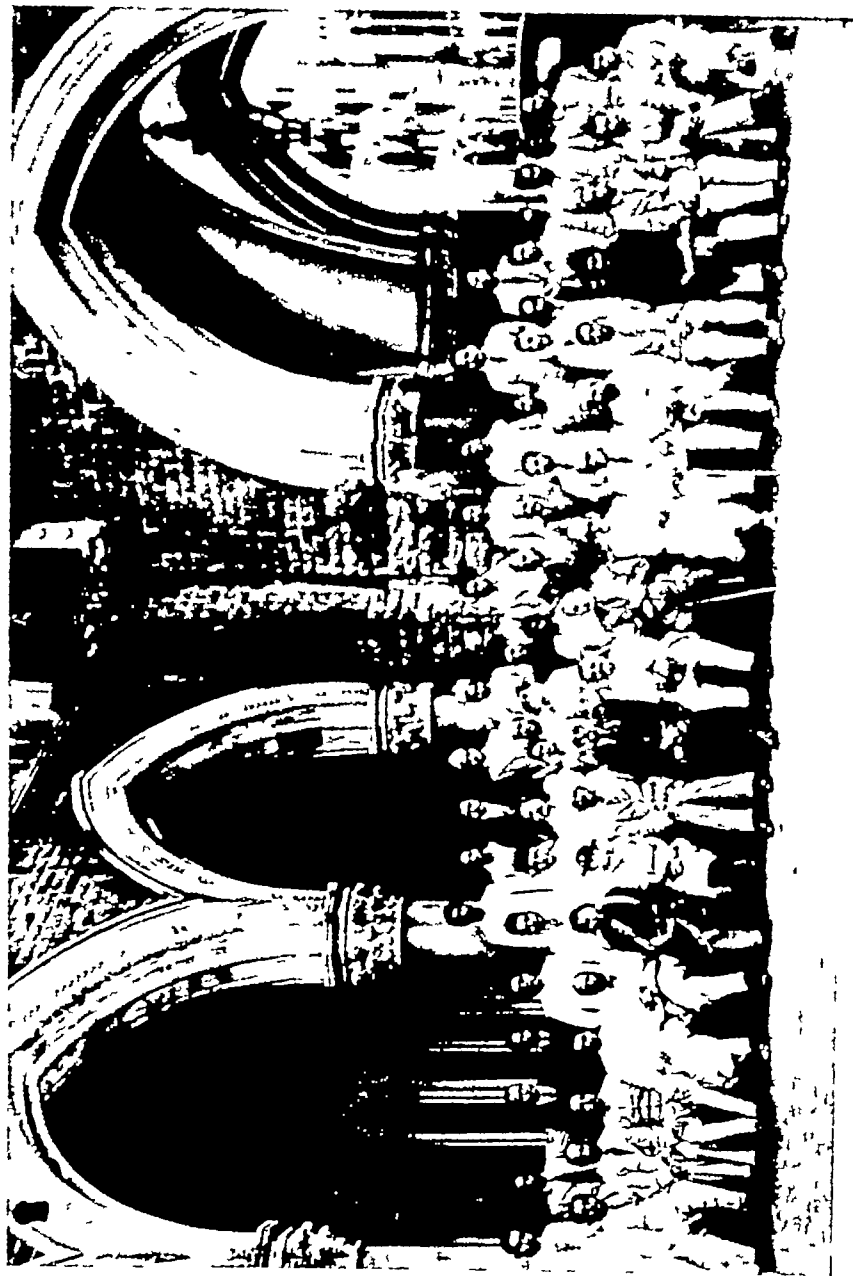
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The First All India Penal Reform Conference

CONTENTS.

PART I

ADDRESSES

	Page
(i) WELCOME ADDRESS Sir John Beaumont, Bombay	1
(ii) CONVENER'S ADDRESS G N Srivastava, M L A , Lucknow	7
(iii) INAUGURAL ADDRESS Sir Maurice Gwyer, New Delhi	21
(iv) PRESIDENTIAL ADDRESS K M Munshi, M L A , Bombay	39

PART II

PAPERS READ AT THE CONFERENCE.

1	CRIMINAL LAW AND PROCEDURE The Criminal Law of India By <i>Abul Hasanat</i> , I P , Rajshahi, Bengal	61
2	MODERN PENAL MOVEMENT ✓ (i) Towards a New Penal Theory By <i>Dr J M Kumarappa</i> , M A , S T B , Ph D , Bombay	75
	(ii) Modern Trends in Penology By <i>Dr K G Rama Rao</i> , M A , Ph D , Bombay	81
3	PRISON PRACTICE (i) The Treatment of Prisoners By <i>Pankaj Kumar Mukarji</i> , Advocate, Calcutta	87
	(ii) The Problem of Undertrial Detention By <i>Abul Hasanat</i> , I P , Rajshahi, Bengal	97
	(iii) Treatment of Undertrial Prisoners By <i>K B Mathur</i> , Advocate, Allahabad, U P	105
4	JUVENILE PROBLEM (i) Is Juvenile Court a Criminal Court By <i>Dr Clifford Manshardt</i> , A M , D D , Ph D , Bombay	109
	(ii) Preventive Work Under the Bombay Children's Act By <i>Miss M K Davis</i> , B A , M B E , Bombay	115

	Page
5. PSYCHOLOGY AND CRIME	
(i) The Criminal Personality in the light of certain psychological tests By <i>Dr N N Sen Gupta</i> M.A., Ph.D., Lucknow	125
(ii) Heredity & Environment in Criminology By <i>Benoy Kumar Sarkar</i> M.A., Docteur en geog h.c., Calcutta	137
(iii) Outline of a Case Study By <i>Dr K G Rama Rao</i> M.A., Ph.D., Bombay	145
(iv) Some psychological and Sociological aspects of Crime By <i>P B Srivastava</i> M.A., LL.B., Dip.Ed.(Wales) Indore	155
6 PROBATION	
Problems and Possibilities in the field of Probation By <i>S Nageswaran</i> B.Sc., Dip. S.S.A., Lucknow	161
7 CRIMINAL TRIBES	
(i) Some aspects of law governing Criminal Tribes By <i>D S Joshi</i> I.C.S., Surat	171
(ii) The Past and Present of Criminal Tribes of the Punjab By <i>Sardar Bahadur Sardar Hari Singh</i> Lahore	177

PART III

PROCEEDINGS OF THE CONFERENCE

(i) Resolutions	193
(ii) Messages	195
(iii) Members of the Provisional Committee convening the Conference	200
(iv) Members of the Reception Committee	203
(v) Members and Delegates in attendance	205
(vi) Office-bearers of the Indian Penal Reform League	207
(vii) Editorial Board	208

PENOLOGY IN INDIA

PART I



The Hon ble Sir John Beaumont
KT KC MA (Cantab)

WELCOME ADDRESS

THE HON'BLE SIR JOHN BEAUMONT, Kt., K.C., M.A. (Cantab)
CHIEF JUSTICE, BOMBAY. CHAIRMAN. RECEPTION
COMMITTEE

LADIES AND GENTLEMEN.

I have great pleasure in welcoming you to this Conference. I hope the arrangements made have been satisfactory. The Reception Committee has a very enthusiastic Secretary, and he has done the work. I am very glad that you have selected Bombay as the scene for the inauguration of this Conference.

I understand from the altered programme, which has just been given to me, that the President of the Conference has not yet been elected, but I understand that Mr. Munshi is proposed to be elected, and I very strongly recommend you to make that selection. Mr. Munshi has unique qualifications for dealing with penal reform because as a result of his political activities, he has found himself an inmate of various prisons in this Presidency, and he thus has the great advantage of being able to speak from personal experience upon matters on which most of us have to rely on hearsay. As you know, he was also Home Member in the Government of Bombay for more than two years. So he is in the remarkable position of being able to view prison administration from the angle of the Minister responsible for it, and also from the humble position of an inmate of a prison. And he is able to view Police administration in the same way, that is as the Minister responsible for law and order, and as the victim of Police activity. So that you will have very great advantages if you elect Mr. Munshi as President.

I should also like to congratulate you on having persuaded the Chief Justice of India to come all the way from Delhi to inaugurate this Conference. It is very good of Sir Maurice Gwyer to have come. I have known him for a number of years. So far as I know he, like myself, has managed to avoid any intimate acquaintance with prison life, but he is a man of deep learning and wide experience, and I have no doubt that you will find his inaugural address very stimulating.

Now, ladies and gentlemen, the subject of penal reform is an extremely wide one, and is one on which, if I started to speak in any detail, I should occupy a great deal of your time, and that I have no intention of doing. I have seen during the last 10 years a great deal of the administration of the criminal law, mainly from the angle of the Bench. There are three functionaries of interest to the criminal or potential criminal, namely, the Policeman the Judge and the Prison Officer. The duties of the Judge are by no means unimportant, but they are the least elastic. A Judge has not much scope for the introduction of sentiment. If certain facts are proved, a conviction has to follow, and if there is a conviction there must be a sentence, and sentences are more or less stereotyped. So that Judges have not much scope for the exercise of sentiment, but I think that any Penal Reform League must beware of allowing sentiment to outrun discretion. In dealing with the criminal it is inevitable that the practical requirements of human relations should clash with the more humane sentiments. No one can visit a prison without being struck by the waste of human lives involved. Many of the prisoners are there for a long term of years and are deprived of the chance of living useful lives with their families. Nobody I imagine, will dispute that punishment has to be imposed

for anti-social acts, and few can doubt that imprisonment is one of the necessary forms of punishment. Generally speaking, the Penal Code only authorizes imprisonment or fine, apart from the death sentence for murder. It is obviously no use inflicting a fine, if the criminal has no money with which to pay it, and in most cases the criminal has no money at all. So he must be sent to prison, notwithstanding the waste involved.

If one had only to consider the reform of the criminal, which is one of the matters to be considered in imposing punishment, probably sentences could be much shorter than they are at present. If a person is not persuaded of the folly of his ways after a year or two in prison, he is not very likely to be persuaded by a further term. I am not talking of young offenders who are undergoing training. But one has to consider also the deterrent effect of punishment, and it is necessary at times, if you are to impress upon people that it does not pay to commit crime, to impose severe sentences. I sometimes think that sentences in India are too long, but many crimes like dacoity, where an unfortunate man is deprived in a single night of the savings of his whole life, and crimes against children, must be severely punished in order to discourage them.

No doubt one of the matters which you will consider most carefully is the question of prison conditions. When I was in England a year or two ago, I went round several prisons, and was very much struck by the trouble taken to prevent prisoners becoming brutalized, and to enable them to retain their self-respect, so that when they go out of prison they will not regard themselves as lost souls. Care is taken to separate the first offender from the old offender. Where practicable there are separate prisons for first offenders, and where this is not practicable, the two

classes are kept separate though in the same prison. I went round one of the prisons reserved for first offenders who had received long sentences, and the prisoners were given a good many privileges. They were allowed to talk at work, and seemed to regard the warders as friends. They are not called warders now but prison officers. In none of the English prisons do they dress convicts in the old convict's garb with the broad arrow; they are dressed in flannel shirts and trousers and they do not look like convicts, and their hair is no longer cropped. Little things of this sort tend to keep up their self respect.

I think one of the great problems in India in relation to prison administration is to get the right type of man as a prison officer. That is probably less easy in India than in England. It is obvious that a warder in a prison has enormous power over the unfortunate prisoners, and if you select the wrong type of man he may do an immense amount of mischief. The governors of the prisons in India, which I have visited, seemed to be sympathetic towards the prisoners, and the prisoners were not afraid of them. But the governor has to be chosen with great care.

When you come to institutions for the training of young offenders, it seems to me that the success of the institution depends entirely on getting the right type of governor and officers. They must possess the capacity, so to speak, of getting under the skin of the inmates and really trying to appreciate their point of view towards life and why they developed criminal tendencies; then only can they hope to be able to influence their charges for permanent good. I suppose any Borstal institution is bound to have a good many failures, but if it has even a small percentage of successes, it will have justified its existence.

Then another matter you will have to consider is the

position of under-trial prisoners. We all know that a prisoner is presumed to be innocent till found guilty. It was, I think, Mr. Justice Darling who once said that that is why the prisoner enters the dock through a hole in the floor surrounded by policemen. No doubt you cannot treat a man charged with a serious offence quite like an ordinary citizen. At the same time it is very important to see that the conditions of under-trial prisoners are satisfactory. When I was on tour last year, I was horrified to see the conditions of under-trial prisoners at one place. There were about 20 heided together in a large cell with nothing but three stone walls and an iron gate, with nothing to sleep on except the floor, and no sanitary facilities. I noticed amongst them two young boys aged about 14. I do not know what they were charged with, but it could not have been anything very serious. In the same cell were dacoits of the worst type, one of whom had been sentenced to death but was being kept in connection with another trial. I made a report to Government, and I believe the conditions in that jail have been altered. You will do irreparable mischief if you keep young and impressionable boys, who may have committed no offence, and in any case no serious offence, mixed with old offenders. Borstal training may be too late after that.

There is another subject which you might consider, (I do not know whether it is the same in all Provinces), and that is the unpopularity of the Police. I do not refer so much to Bombay City as to the Districts. It is common form in criminal appeals to find charges made against the Police. It is always said that the Police have brought false charges; that the Police Patel is an influential man in the village and has concocted evidence, or that the Head Constable has worked up a false case; that confessions have

been obtained by torture or improper inducement by the Police, and that property produced by the accused was planted on him by the Police. Of course, most of such charges are quite unfounded, but it is an unfortunate fact that in most of the Districts in this Presidency the Police are not regarded, as they are in England, as being the friends of the people. The village Policeman in England may be regarded as a man to be on the right side of, but no one would think of suggesting that he brings false charges against his enemies. But it is not so in India, and the reasons for this may engage your attention.

Well, ladies and gentlemen, I have taken up enough of your time. You have long and interesting addresses to listen to and I may conclude by repeating how glad I am that this Conference is held in Bombay



Gopinath Srivastava M.L.A.

CONVENER'S ADDRESS

MR. GOPINATH SRIVASTAVA, M.L.A., FORMERLY PARLIAMEN-
TARY SECRETARY, U.P. GOVERNMENT, LUCKNOW

FRIENDS,

You will, I am sure, agree with me that this Conference of some of the leading men and women who have laboured hard over a decade or two in the cause of social welfare work in this country is a unique event for at least two reasons. It marks for the first time in the annals of this country, the beginning of organised social and humanitarian service. I lay stress on the word 'organised', for in all ages and the world over there have always been some among men and women, and institutions imbued with a religious fervour or as devotees of a benevolent humanitarianism to extend sympathy and charity to the destitute, needy and the afflicted. But planned social work by workers who are realists, by whom I mean those who face facts and approach them with less or none at all of sentiment but with a professional attitude and a genuine humanitarianism, is just beginning to find a place in the ordering of our community and national life.

But social welfare work today has not been content to aspire for planning and organisation alone. It inclines to mark a step further and has already begun to attract the creative imagination of the scientist. This has been possible partly because of the inherent interest that affairs of man inevitably evoke in an inquiring mind, and partly also because the 20th century scientist has begun to see around him more of directive activity than blind mechanism. His



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central association, of the type of American Prison Association or the Howard League in England—though this assembly will soon be entrusted with the task of promoting one such association for this country—to collate, study and interpret penal facts of all India bearing and to promote penal measures of all India applicability. The gravest of handicaps, it appears to me, is the ignorance and resultant apathy of the public, unresponsiveness of the press and lack of expert personnel.

As some of you must be aware that since the Great War crime has been on the increase, especially juvenile crime and destitution in the larger cities, and along with it the drain on the country's resources. The cost of running the prison administration alone forms on an average two per cent of the provincial budget. And how much more would it cost to run the machinery engaged in the detection, arrest, trial and conviction of offenders. As you know this expenditure of the country's time, energy and money has as its avowed objects protection of society from anti-sociality and training of the offender so as to enable him to readjust himself to a life in common. But are we at all progressing towards the realisation of these objectives?

However, with the advent of provincial autonomy in some provinces penal and prison matters began to attract the serious attention of the Government. When at long last we set to work it was found the entire penal machinery required overhauling and reconstruction. There were no crime preventive agencies worth the name. The personnel was untrained and least enthusiastic. After-care work was unorganised and largely wasteful. There was little opportunity for exchange of views and ideas as between provinces or between individuals. No facts and figures other than what were given in the departmental publications

(mostly annual reports); but these were neither educative nor did promise of assistance in carrying on experiments on penal subjects.

These and similar conditions provided the background against which provincial governments had to contend before constructive penal programme could be initiated. Notwithstanding, in my own province, the United Provinces, the Government availed itself of the very first opportunity to appoint three committees—a reforms committee, an expert committee and a departmental committee. They were asked to thoroughly examine the present penal methods and practices and to recommend measures calculated to achieve the twin objectives of all penal reform, namely, protection of society and rehabilitation of the prisoner. The United Provinces Discharged Prisoners' Aid Society was revived by an order of the Government and was placed under the combined care and control of the Government and the public. Under its auspices I founded and edited a monthly journal devoted to penal matters. The Penal Reformer has now completed over a year of service in the cause of penal reform in this country, which many have considered to be both active and useful.

In the meanwhile some well-known social welfare workers of Bombay got together and were planning to organise a provincial association on the lines of the Howard League. It was about this time, if I remember right, that I received a letter from Dr. K. B. Menon suggesting my presence in Bombay for a proposed meeting of the local social workers, and co-operation with their move for a penal reform association. I readily consented, thinking that this was the psychological moment to urge for the formation of an all India association for penal reform. I argued first within me, later with friends in Bombay that



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attitude to, technique and interpretation of the facts of the physical and biological world have undergone a remarkable change in the last 20 years or so. This has had significant effect, as is only to be expected, in bringing about a reorientation in aims, methods and practices of social welfare work.

The concern of the man of science over the affairs of brother man has not stopped at merely infusing into the mind of the social worker a new zeal for reforming or bettering the conditions of living of the social problem individuals. He has caused to bring into being a practical humanitarian and professional form of social service and thus has helped to remove from the front the sentimentalist person who never learns, who does not even recognise the fundamental weaknesses of a social order which tend to perpetuate social problem conditions. It takes courage of a high order to admit shortcomings in the traditional ways of approach to problems of this kind and to challenge the champion of a superficial 'brother love' attitude.

In our own country centuries long political and economic subjugation and outworn religious conceptions and practices have tended to overshadow if not dangerously ignore, the silent but steadily growing front put up by what are fast developing to become social problem communities. Although at one time that is before mechanisation of life and relations on the Western model set in our social problem conditions were somewhat different and differently evaluated today they are fast tending to conform to the world type. But our approach to them has not changed. It could not change. For the whole country was preoccupied with a politico-economic mission in that it had to contend against an alien domination. Secondly, organised social service is handicapped to no mean extent by the vastness of the country, uneven development of the provinces

and states, communal divisions, extreme religiosity of the people, their beliefs, rituals and conventions rooted more in ignorance, superstitions and faith than are rational and meaningful.

Can we not help to remove these basic handicaps? Two essential conditions, however, have to be fulfilled before success is anticipated. There should be a body of sound and solid knowledge of community problems, and a band of trained social workers. We are still far from providing a firm basis to make a beginning in either of these. The supreme tragedy of the situation as I see it is the sentimentalist is refusing to give way, and he still persists in damning professionalising of the social services. Training for social work appears to him to be the latest fad, a symptom of Americanism as an old world man would say.

Nevertheless signs are not lacking to show that in recent years leaders of humanitarian, social and scientific thought have begun to realise, partly due to a keen and critical sense of respect for social justice and partly under political and economic necessity, the imperative need for a planned scientific approach and co-ordinated effort in this direction. But their path is not smooth. Obstacles to change and progress are many and varied.

There are other grave handicaps to effect a radical change—for no informed man could deny that our penal system did not require complete overhauling. The penal matters of an all India character, such for instance as conformity of criminal law to the present day changes in the political, economic and social structure of the country, promotion of Children Laws, abolition of penal penalties that savour of naked vengeance, etc., do not admit of provincial handling.

It is a matter for regret also that we have not yet got a

central association, of the type of American Prison Association or the Howard League in England—though this assembly will soon be entrusted with the task of promoting one such association for this country—to collate, study and interpret penal facts of all India bearing and to promote penal measures of all India applicability. The gravest of handicaps, it appears to me is the ignorance and resultant apathy of the public, unresponsiveness of the press and lack of expert personnel.

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a provincial association suffered certain serious disadvantages. For instance it could not easily attract the best brains from other provinces nor collect facts and investigate experiments of wide applicability. It could provide at best a limited platform for speakers on penal reform. Co-ordination of penal efforts would become difficult of achievement on a provincial basis, with the resultant waste of energy effort and money. If it were to attempt bigger things it is bound to prove much too expensive an undertaking for a province to bear. These reasons against attempts at forming an exclusively provincial organisation to function for the whole country should be enough to convince even the extreme separatist of the untenability of such a scheme.

On April 12, 1939 a meeting of the Bombay workers was held in Bombay with Mrs Taraben Maneklal Premchand in the chair. It was attended among others by Mrs Kumarappa, Mrs Mehta Mrs Currimbhoy, Mrs. Choksy, all well-known in the field of social welfare work in Bombay and Mr B N Motiwala of the Social Service League. Prof Choksy of the Adult Education Association, Dr Kumarappa of the Tata School of Social Work, Mr K. K. Menon of the New Era School, Col Coolidge of the Salvation Army, Mr Joseph Callen of the Y M C.A., Dr Mehta Police Surgeon, Dr Lal Kaka eminent Bombay Psychiatrist, Dr K B Menon of the Indian Civil Liberties Union, Dr Udgaonkar and Mr Dabholkar of the Bombay Discharged Prisoners Aid Society. Dr P K Sen from Patna and I attended this meeting on special invitation. This meeting elected five persons from Bombay and requested Dr Sen and Dewan Bahadur Narayanaswami Chetty from Madras to serve on a committee provisionally formed for popularising the move for an All India Conference of persons interested in penal

reform. I was appointed Convener of the Conference. It was decided that this small committee should be enlarged to include men and women from other provinces who may be interested in penal reform either from humanitarian and social points of view or as scientists. At this meeting I invited the proposed Conference to Lucknow.

Our next task was to get into touch with other provinces and bigger states, and with their Governments. Simultaneously a publicity campaign was initiated with a view to educating public opinion. In the months of August and September last Dr. K. G. Rama Rao and I toured in most of the provinces and a few of the Indian States, and met with most encouraging response from practically all the provincial administrations and some of the States. I may also mention here of the help, advice and guidance I have received all through from Dr. P. K. Sen, particularly in the matter of representation on the Provisional Committee from the provinces of Bengal, Bihar, Orissa and Assam. By the middle of September we were assured of the sympathy and support of all the provincial governments and the States of Travancore, Mysore, Hyderabad, Bhopal, Gwalior and Indore. Most of the provincial governments and some of the states agreed to participate in the deliberations of the Conference.

With the enlarged Provisional Committee, promise of support from the governments and the interested public, especially from some of the well-known psychologists, psychiatrists and sociologists in the country and with the formation of a Reception Committee in the United Provinces the final arrangements for holding the Conference were nearing completion. A provisional Constitution for the proposed Indian Penal Reform League was drafted and circulated among the members of the Committee. Sugges-

tions, if any, by way of alterations in or additions to this draft Constitution were invited from the members. With the approval of majority of members it was decided to fix the Conference date for October 20 and 21, 1939.

Next the question of choice of persons for the President ship and to inaugurate the League engaged our attention. Having known the work of the Bombay Ministry in the matter of penal administration, particularly in regard to juveniles we naturally thought that Mr K. M. Munshi who was then in charge of the Prison portfolio is the person most fitted to be the first President of the League. It is a matter of common knowledge that the famous Chembur scheme, the first of its kind in India, owes its origin and development to the untiring effort and keen and critical interest which Mr Munshi has shown in the matter of providing care, supervision and control of the delinquent, difficult and destitute children. To inaugurate the League we could not have possibly chosen a better person than the Honble Sir Maurice Gwyer, who within the short span of two years that he has been amongst us has so much endeared himself to the cause of social welfare work in the country and has shown great interest in the institutions, particularly in Delhi, for delinquent and destitute children. It was indeed our good fortune that both the gentlemen wholeheartedly agreed to be associated with the Conference and the proposed League, and we must gratefully thank them for even agreeing to the change of date and venue of the Conference.

During this period we were also in touch with some of the Prison and Penal Reform Associations outside India particularly in America and the United Kingdom and with the International Penal and Penitentiary Commission. We were thus not only maintaining contact with these bodies

but were shown by them the probable lines of penal reform work upon which we would do well to concentrate in the coming years. Some of these associations were also kind enough to send us greetings and good wishes for a successful session of the Conference.

When we were about to announce the final arrangements for the Conference, a succession of events intervened throwing doubt on the feasibility of meeting in Conference just then. War broke out in Europe and India was declared a participant in that conflict. Soon after in eight of the provinces the party in power disagreeing with the Government of India's war moves went out of office, thus giving rise to an acute feeling of uncertainty in the country. We immediately communicated with the members of the Provisional Committee and the provincial governments and States with the object of ascertaining their opinion on the desirability or otherwise of holding the Conference on the dates provisionally fixed. In reply majority of them expressed in favour of postponement of the Conference to a later date in the year, but all of them earnestly desired to meet, if at least to bring the proposed League into being, as early as it can be conveniently arranged. Under the circumstances it was inevitable that the originally fixed programme had to be changed. It was also unfortunate that the proposal to hold the Conference in Lucknow had to be abandoned for the present.

Of one thing, however, we were all agreed, namely that, although the Conference may conveniently be postponed to a more suitable date, the formation of the League should not be indefinitely put off. The only course, then, open to us was to see if a meeting of the All-India Provisional Committee could be held in a place suited to most of the members. Bombay was suggested for the purpose. Fortunately

for us some leading social welfare workers and scientists of Bombay, among whom are some members of the Bombay Provisional Committee, very kindly agreed to extend facilities for holding the meeting there. Mr Munshi not only readily agreed to our proposal but was also kind enough to assure us of his full co-operation in making the final arrangements. On his suggestion we approached the Bombay Children's Aid Society with a request to act as host to the delegates. Later it was suggested that the Sir Dorabji Tata Graduate School of Social Work and the Society for the Protection of Children in Western India also should be associated with the Children's Aid Society, and the three institutions are jointly to constitute a Reception Committee. It was also decided that the full programme covering a two-day session, as was fixed for the Lucknow meeting, should as far as possible be gone through. After consulting the Bombay Reception Committee, Mr Munshi and Sir Maurice Gwyer February 24 and 25 were considered to be the most suitable dates for the Conference to meet.

Friends I have now only to dwell briefly on the nature of work which the League may be expected to concentrate upon in the coming years and also on our needs—finance and workers.

I have had occasion to refer earlier in this report, to the two-fold purpose for which a League for Penal and Prison Reform ought to stand namely to afford protection to the community, to which it is entitled against social aggression of its own members individuals or groups and to provide the right conditions for a social and vocational training of the offender with a view to fitting him or her to a self-dependent life in a free community. To fulfil this fundamental purpose the League should have to formulate certain general as well as specific measures to combat criminality, particu

laily the methods of handling the incidence of juvenile and adult crime in the communities and treatment of criminals, and education of public opinion. Of these, it seems to me, the effort to educate the communities in order to make them understand and recognise the purpose for which the League stands and its activities which aim at promoting their own good and the good of the erring individuals who comprise them is of first necessity. For even today the modern methods of handling delinquency and crime, such as probation, parole, conditional release, institutional education, open prison camps, after-care work of the Prisoners' Aid Societies are treated by governments and the public alike as "pampering the criminal". Many an educated person still holds the view "once a criminal always a criminal". Surely such critical intemperance of opinion stands the least chance of being reconciled with the remark of an expert criminal that "the only way to stop us to find out who and what we are and what we are good for " Unless, therefore, the energies of the League are devoted to the fullest extent to educating ourselves first we cannot reasonably hope to reclaim to our fold the men, women and children who, either by accident or by inclination, have come under the attention of the police.

Equally important is the work to be carried on by experts on penal and prison matters—in criminal psychology, psychiatry, criminal law, prison administration, correctional education, etc. Indeed, it is hoped, the League will undertake in the near future to study the recent criminal law developments and to correlate them to the present day needs of the communities. It will also suggest improvements in our penal and correctional institutions and will urge upon the need to provide for the training of their personnel and generally to raise the status and efficiency of penal and

prison administrations by professionalising the services under them. It is proposed also to found, when finances permit, a central institute of research with a well equipped clinical laboratory and library at which various schools of criminology will be represented

If the educational and scientific work of the League is to result in substantial gains to the state and the communities, then, necessarily the League's activities will have to extend in the direction of co-ordinating the efforts of the individuals and organisations interested in the administration of certain speedy and adequate after-care. With the problem juvenile who has just left the institution or the adult prisoner soon after release the future is one of hope and of vaguely foreseen possibilities. Sooner or later he has got to enter the socio-economic world where he seeks the realisation of his ambitions and where also the state's and community's expectations of him are to be fulfilled. It is exactly at this juncture the need for an effective after-care service arises.

You will thus see that our needs and activities are many and varied. In the immediate future we propose to concentrate on publicity or more strictly speaking on the education of public opinion by publishing from time to time leaflets and pamphlets on various penal and prison problems in the country, and an official organ devoted to the study and dissemination of knowledge pertaining to penal questions of our country and abroad. It is also proposed to institute a committee of experts to furnish advice and information on prison administrations, preventive correctional and after-care measures, to promote bills for penal and criminal law reform, etc.

All this work costs money although scientific and technical part of it is expected to be done by voluntary service

As the activities of the League expand, as it will when we have sufficient income to enable us to make wider studies of experiments in other countries, publish more literature and carry on an intensive propaganda for educating the communities and the criminal, the gains to the governments and the public will be large. At this stage, however, our appeal for finance has to be based largely upon theoretical grounds, the urgent and imperative need for a central association for penal reform in a country whose penal system lags far behind the time, and yet whose penal and prison problems are as acute and as insistent as those of any other country. The amount which we hope to collect by way of annual membership-fee will barely cover out-of-pocket expenses of membership. Larger subscriptions and donations are urgently needed. We confidently hope that the provincial governments, the governments of the Indian States and the public who would like the Indian Penal System to be scientific, efficient as well as humane will agree with the basic importance of the League's aims and will wish to support it not only by becoming its members but by liberally donating substantial sums of money to its funds.

Friends, with this, my fervent appeal for sympathy for the League's aims and financial support to carry on its activities I close my report.



The Hon ble Sir Maurice Gwyer
KCB KCSI DCL

INAUGURAL ADDRESS

THE HON'BLE SIR MAURICE GWYER, K.C.B., K.C.S.I., D.C.L.,
CHIEF JUSTICE OF INDIA

MR CHAIRMAN, LADIES AND GENTLEMEN,—

It is a great honour to have the privilege of inaugurating this Conference, the first of its kind to be held in India. You have heard from Mr Srivastava's report which has just been read how it originated, as well as the names of those whose enthusiasm has been responsible for the gathering here today, most of whom are well-known to you. They are men and women with great experience and acquainted with different aspects of the problems which you will have to consider, some because they have had practical and administrative experience of them, others because they are interested in social service and methods of training for it, others again because they have made a profound study of the psychology of crime and criminals. All, as I have said, are enthusiasts, and it ought to be one of the aims of a conference of this kind to cause that enthusiasm to be communicated to others. And we must tender our sincere thanks for the welcome extended to us by the people of Bombay, a city which has always shown a lively desire to be in the van of progress.

You have heard what are the general aims of the promoters of this movement; and later on today and to-morrow you will be considering the constitution of the new League and how best it can be organised for the purposes which it has in view. You will also have the pleasure of listening to papers read by experts in different branches of the subject and of discussing them yourselves. My own purpose

is less ambitious, but I should like, if you will permit me, to make some general observations on the ideas which underlie the whole conception of this Conference.

The subject matter of the Conference is penal law reform, and it is one in which, I think, every good citizen ought to take an interest. The administration of law and justice is something which touches us all and the penal laws are but one aspect of it. But the penal laws are, or should be, of interest to us for another reason altogether for they touch our common humanity. We no longer look upon the criminal as a wild beast to be hunted down without pity or remorse. We have come to recognise that he is a man like ourselves, and indeed that we, or our fellow-citizens may have to bear part of the responsibility for having made him what he is.

My first contact with these problems came as I suppose it came to a good many of my audience today when I first began to practise the law as a young barrister. In those days I used to go on circuit and on circuit everyone used to do a little criminal work, that is, when he was so fortunate as to get it. It is an excellent training for a young advocate because it teaches him the law of evidence and the right way to examine a witness. But even the exquisite pleasure of snatching a verdict of "not guilty" in the face of a hostile summing up, which did sometimes happen never seemed to me an adequate compensation for the atmosphere of the Crown Court. The proceedings of the Court were always dignified and impressive and I never hear the phrase "the majesty of the law" without recalling the Red Judge in his scarlet and ermine moving from one assize town to another in the west of England. In earlier days the Red Judge was the visible embodiment of public order and a guarantee that the organisation of the State

was there to control lawless men and to keep the King's peace, even though the King himself and his Government were a long way off. In one sense he is so still, but today we all take the King's peace for granted; and I used often to feel a sense of discomfort when I saw this terrifying and relentless machinery put into motion for the purpose of punishing some petty offender who scarcely deserved the name of criminal. The law itself was humanely administered, and I never remember seeing a case in which I felt that injustice in the ordinary sense had been done. Sentences were usually mild, and even when they were not, were never, if my memory serves me, so severe that they could be called harsh. But, as I have said, there was often a sense of maladjustment. One scene in particular has left an indelible impression on my memory. It was the case of an old man, I think between seventy and eighty, who had pleaded guilty to larceny of a door-mat; and it appeared that he never stole anything else, and had spent I do not know how many years of his life in prison, always for the same offence, for no sooner had he emerged after completing one sentence than he stole more door-mats, which he sold for a few pence and lived on the proceeds till he was arrested again. As the law then stood (I do not know if it has been altered since), it was necessary to commit him for trial at the assizes, because he was charged with committing a felony after previous convictions for felony. The Judge was an old man of over eighty and I think that it was his last assize before his retirement. He had been a very capable and dignified judge, but had become increasingly deaf. The prisoner was also deaf, and when the Judge with tears in his voice addressed a few words to him before pronouncing sentence, imploring him to turn over a new leaf in the few years of life which still remained to him, the old man in the dock, who heard nothing

about the administration of the law, except that I have never met a Judge in India who did not refer to the difficulty of arriving at the truth in criminal cases, and indeed a friend of my own tells me that he is a strong advocate of the abolition of the capital sentence in murder cases solely on the ground that owing to the prevalence of hard swearing he can never feel absolutely certain that the right verdict has been arrived at. The remedy for this state of things must surely lie in the raising of the standard of education, but I think too that the increased sense of responsibility which self-government must bring will also have its effect. As to crime itself the causes of it are, I suppose, much the same as in other countries, poverty, want of self control and the predatory instinct of individuals of special causes in India, if such exist which encourage crime of one kind or another I have not the knowledge to speak. But I confess that I have been struck by the singularly detached view which seems to be taken of crime generally in this country. Those who are in a position to form a judgment on the matter have told me that interest in the problems arising out of crime and criminals with which this Conference is going to occupy itself is too much confined to the legal profession and to persons whose emotions are readily stirred by the thought of punishment being inflicted upon their fellow-creatures but do not pause to consider whether the punishment was deserved or not,—the persons, I suppose whom Mr Srivastava would dismiss as sentimentalists. This is an Indian judgment and not my own, but I think it worth mentioning and if it be well founded I can think of no greater justification for the work which this Conference is seeking to do.

When I turn to the second part of our subject punishment of crime and the treatment of the criminal I seem to

find the same detached attitude on the part of the general public. I have heard of dreadful cases of cruelty towards prisoners in jails which would in my own country have raised such a storm of indignation as might even have endangered the government of the day; here they seem scarcely to have aroused a more than transient and local interest. I do not know if this is an example of fatalism or of detachment, but I can see very clearly the difficulties likely to be met by reformers who seek to induce another attitude of mind.

I suppose that men will always go on disputing as to the true basis and justification of punishment, whether it is in essence a kind of social vengeance, or a deterrent, or a means of reformation. In my own view it partakes of all three, the importance to be attributed to each varying with the circumstances or the habits of thought in each country. Every organised society must have the right to protect itself against those who deliberately break its code or refuse to subscribe to its standards. The more primitive and loosely organized the society, the greater the danger from the law-breaker, and hence the savage and barbarous penalties of an earlier epoch, though these too often survive long after any excuse for them has disappeared. In a modern well-organised State the true deterrent of crime is not so much the severity of sentences as the swiftness and certainty of punishment; and thus the main purpose of the punishment itself comes to be regarded as not so much deterrent as reformity. But the other elements remain. There is nothing reformatory about capital punishment; and after all allowance has been made, after justice has been tempered with mercy, and the rights of the individual weighed against those of society, there does still remain, I am afraid, an irreclaimable residue who

a judge passing sentence and telling the prisoner, as judges sometimes will, that society must be protected against persons such as he, wondering whether a prisoner would ever ask in his turn "But who is going to protect me against society?" Society may create criminals as well as punish them, and will continue to do so until it has accepted in full the philosophy of which I have just spoken.

A reformer who is unwilling to profit by the example of other systems scarcely deserves his name. I do not mean that he is slavishly to copy them, but he will at least desire to seek to grasp the ideas which underlie them. I do not think that the western democracies need fear comparison with other countries in this matter, and if I refer to my own country more than to others it is only because I know it best. Nor will my audience suppose, or at least I hope that they will not, that anything I say is to be taken as reflecting upon countries not so far advanced for it is impossible to compare or contrast results without knowing the circumstances of each case and the difficulties which have to be surmounted and this a matter in which we may surely all pool our ideas and our experience without indulging in feelings either of envy or of superiority.

I believe that India can profit by an examination of the western approach to problems of crime and punishment and of the western methods of handling them. But I am also firmly of opinion that this examination is unlikely to be fruitful unless the difference of the backgrounds in India and in the West is fully appreciated. The western democracies have this advantage that they were pioneers in the field and for many generations past have devoted much thought to the problems involved. They have produced individual reformers whose names are known throughout the civilised world but though these were a

powerful factor in awakening the national conscience to the presence of grave evils in the body politic, yet I do not think that their effort would have been so successful if the reforms which they advocated had not been felt to be in harmony with a profound revolution which was in progress in the whole cultural life of the nation. We may say that the eighteenth and the beginning of the nineteenth century were rough and coarse epochs in many ways, and it is easy enough to criticise what seems to us now to have been their insensibility or their complacency; but under this outer shell (I willingly admit that it was tough and hard enough) there was a national conscience waiting to be stirred; and the reform of the criminal law, the abolition of the slave trade and the early Factory Acts are sufficient to show that when the attention of reasonable men is drawn to evils which for want of perception or imagination they have not up to that moment seen in their true perspective, they will, if their conscience is touched, make every effort to put things right.

I believe that a revolution of the same kind may now be in progress in India, but my Indian friends have often lamented to me the difficulty of getting people to take an active interest in anything outside politics. If I were to comment on this, I might find myself treading on forbidden ground, and therefore I shall content myself with saying that your efforts to create a public opinion on all the matters of which I have been speaking are not likely to fail for want of opportunity or material on which to work. And here I should like to make two brief observations, being led thereto by some remarks of Mr. Srivastava in his report

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ters. I recognise that without the assistance of the different governments your work is likely to be handicapped but I trust that you will always maintain an attitude of independence and freedom of thought. Secondly, I observe that Mr Srivastava urges the "professionalising" of the social services, and if by this he only means that workers in this field should be trained in the principles and technique of social work, then I should agree with him. But he seemed, I thought, to treat experience a little cavalierly and he cannot resist a fling at those whom he stigmatises as sentimentalists. There is I agree one type of sentimentalist who is the bugbear of all true reformers, because he has little sense of values and will not undergo the hard mental discipline of thinking a problem out. But I am not disposed to treat too lightly the power of emotion as the driving force behind a great cause nor to despise the worth of voluntary effort, inspired not by governments nor scientific researchers, but by a true love and pity for the suffering and the oppressed. I would never dispute that philanthropy informed by knowledge and experience and based upon sound method is on every ground to be preferred to an ill regulated philanthropy which is designed to afford comfort to those who exercise it rather than to those who are its objects. But though I may be altogether wrong I hold the view equally strongly that an ill regulated philanthropy is better than no philanthropy at all and I doubt if the most scientific method which labels criminals with their appropriate scientific descriptions and deals with them no matter how efficiently as so many administrative pawns effects as much real good as a single warm-hearted man or woman who seeks to establish personal contact with a criminal upon the basis of their common humanity. I do not wish to be misunderstood. I am only pleading that when we seek to avoid one extreme we do not run into the other.

And when I recall that in my own country all the movements which have been so enthusiastically taken up elsewhere originated in the efforts of private persons or individual officers who ultimately persuaded government that they were worth adopting,—the whole probation system, juvenile courts, the Borstal schools, and the Wakefield prison experiment—I see no reason to suppose that only in governments and in departments of government is true wisdom to be found.

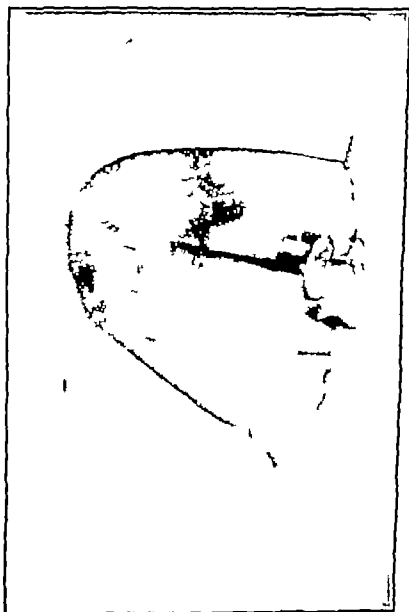
Those who are disposed to lament the shortcomings of the present I recommend to cast their eyes back a little and see how far we have in fact advanced in the last hundred or hundred and fifty years. I do not say this for the purpose of encouraging complacency, but rather the contrary, for when we see how the best minds of an earlier generation accepted things from which we now shrink in horror, we ought to remind ourselves that we too shall stand one day at the bar of history and that the verdict upon us may not be so favourable as we may now be inclined to believe. Let me read you a passage from Boswell's *Life of Johnson*, and remember that few men had a more tender heart than Dr. Johnson. "He said to Sir William Scott, 'The age is running mad after innovation; and all the business of the world is to be done in a new way; men are to be hanged in a new way, Tyburn itself is not safe from the fury of innovation.' It having been argued that this was an improvement—No, Sir (said he eagerly), it is *not* an improvement, they object that the old method drew together a number of spectators. Sir, executions are intended to draw spectators. If they do not draw spectators they don't answer their purpose. The old method was most satisfactory to all parties, the public was gratified by a procession; the criminal was supported

by it. Why is all this to be swept away?" And I need hardly add that Boswell thoroughly agreed with this view and held that executions had no longer the effect which they formerly had. Today we no longer argue whether there should be public processions to a place of public execution we argue whether capital punishment itself can be justified. A hundred years ago there were still parts of India where criminals could be torn to pieces or trampled to death by elephants today it is a matter for debate whether flogging can in any circumstances be regarded as a proper punishment for a convicted felon.

The holding of this Conference is nevertheless a sign of the times, and it will one day I hope, be looked back upon as a true land mark in the history of the social services in this country. There are long periods during which little social progress seems to be made though I think that the process of amelioration would be found on examination to be going on insensibly all the time. But undoubtedly moments do come when for some reason or other, a country or a people pauses to take stock of a particular situation and to review principles on which past policy has been based and then there is very often if not a complete break with the past, at any rate a defection to a new and hitherto untried course. The public interest is stirred or the social conscience is awakened and men begin to realise the incalculable harm which may be done by ignorance or carelessness no less than by wickedness or malice. Such was the awakening which took place in my own country after the astonishing labours of John Howard and Elizabeth Fry and it may be that the labours of this Conference will also result in drawing attention to matters on which the public at large has never reflected and the importance of which it has never realised. Indeed I think

it true to say that we can detect throughout the whole history of criminal and prison reform two distinct influences at work, of which now one and now the other has produced for the time being the more far-reaching results. The first is to be found in the evolutionary development of those general ideas which underlie the progress of all civilisation and therefore affect indirectly our views on crime and punishment as on other matters; the other is the direct and powerful influence which a convinced and determined body of reformers in a particular field, inspired by an almost missionary zeal and disdaining none of the arts of the propagandist, can exercise upon their generation. When these two influences are combined, they are almost irresistible. The ferment of new ideas in India today shows that the first is already at work; I hope that the new Penal Law Reform League may furnish the second.

I have already trespassed too long upon your patience. Let me then conclude this Address by thanking you most warmly for your attention and wishing Godspeed to all your labours.



K M Munshi B.A. LL.B. M.L.A.

PRESIDENTIAL ADDRESS

K. M. MUNSHI, B.A., LL B., M.L.A.

FORMERLY HOME MINISTER, GOVERNMENT OF BOMBAY

I

I am deeply grateful to the convenor for doing me the honour of calling upon me to preside over this Conference. I wish he had invited an expert, for I am no criminologist. All I can do is to give you my personal views on penal reform which I had formed during the twenty-seven months of office when I had daily to come in intimate contact with the live problems of crime in our province. What little efforts I made, as a Minister, to solve those problems, came, as you know, to an abrupt end.

Crime cannot, and in my opinion should not, be dealt with in compartments. Our experts, judges, magistrates, lawyers and administrators even without any scientific outlook have, no doubt, made a success of their job. Here, as elsewhere, we have muddled through without any synthetic effort between the agencies working on the different problems of crime. But unless the various problems are studied and tackled in relation to each other attempts to control the anti-social instincts of man are not likely to be more successful than in the past.

An expert body like the proposed League alone can provide the necessary meeting ground for students of different branches. And, therefore, the scope of the League should be sufficiently wide to include the study not merely of penal reform but of the whole field of criminology,—of

(a) crimes and criminals,

(b) crime in relation to our social conditions;

- (c) the agencies of prevention and control of crimes,
- (d) criminal justice,
- (e) the treatment of criminals, potential and actual and
- (f) the causes of criminal tendencies and their removal.

I am glad that several governments of provinces and states have been represented at this Conference. The work of the League can only be successful if those who are actually occupied with administering criminal law supply the necessary corrective to the theories and ideals which the theoretical expert is likely to contribute.

II

What acts and omissions should be considered crimes is a question of great complexity. Acts and omissions which involve violence or fraud are universally recognised as crimes. And so are acts which violate the rights of person and property. Luckily the Indian Penal Code which mainly deals with these two classes of crimes and which of all British legislation in India has had the greatest influence on regulating social relations is and will continue to be the axis round which our criminal law will revolve for a long time.

The Penal Code has stood the test of time for it expresses the fundamental crimes which affect society in such a masterly way that though the contents of several offences have changed with the march of time no change has been needed in the language. An instance is provided by section 153-A of the Indian Penal Code. It provides for an offence which promotes feelings of enmity and hatred between different classes. The draftsman when he

used the word "classes" in 1898 possibly thought of only religious classes. But the basic idea of the offence was to prevent classes sufficiently well formed in society from being set against one another by offensive words or conduct and thereby to check a widespread or chronic breach of public tranquillity. Even in modern times when division and classification amongst the people is not necessarily confined to religious grounds the section remains sufficiently comprehensive to control anti-social activities which attempt to promote enmity or class hatred between groups or classes which are divided on a non-religious basis.

Certain sections of the public have now so far advanced in intelligence and organisation that the problem is to guard society against new methods invented to circumvent this law by rendering it impossible to prove the offences in a Court of Law. The offence of criminal intimidation is a case in point. The draftsman of section 503 of the Indian Penal Code could only think of the illustration of A threatening to burn the house of B in order to prevent B from prosecuting a civil suit. But A has become far more clever and subtle, he can achieve his purpose by forms of intimidation which are more effective and dangerous and yet capable of eluding justice. He can intimidate his victim and his witnesses to such an extent that no one will have sufficient courage to file a complaint or give evidence. He can organise volunteers who would march in semi-military formation through the streets armed with lethal weapons and thereby achieve his object. If he is a subtle and cunning artist he can by organising a net work of bullies in chawls, factories and workshops, intimidate thousands or blackmail a whole community with impunity. Did not the Fawcett and Kania Committees testify to the all pervasive nature of this kind of

into crime or turning a criminal behaviour into a non penal one. The problem becomes difficult when there is a conflict of values between the enlightened section and the general body of the community. The vocal and the westernised section of the public in the City of Bombay did not approve of the Gambling Act being placed on the statute book under pressure of public opinion nor did it entirely approve of the laws prohibiting drink and drink traffic. On the other hand opium traffic was made criminal by the enlightened section against the general sense of the community which saw nothing criminal in taking opium.

The position in this respect can be summarised in a few propositions

No behaviour which does not offend the general sense of the community and which is not recognised as a social danger by it should be made a crime. The general sense of the community which is sought to be reflected in the creation of an offence must be real and widely shared. The view that social reform is not within the domain of criminal law but must be left to moral persuasion is not acceptable to the modern mind as all States show a tendency to be socialistic in action if not in theory. Unless the general sense of the community is translated into legislation, mal adjustment in society cannot be removed with the speed which modern life and temperament demand.

At the same time more offences on the statute book imply more power to the police more interference with individual freedom and more pervasive attempts at evasion. The benefit derived by the community by such penal provision therefore must be greater than the evils which would follow their successful evasion.

The sense of the vocal and westernised section of the community in India is often not the general sense of the

community as in many matters that section generally moves apart from the bulk of the community. In view of this conflict of values the general sense of the community may through a legislature accomplish a reform by converting an objectionable form of behaviour into a crime, but the free thinking and westernised section which supplies the judiciary, the bar and the police may by conscious or unconscious sympathy weaken the enforcement. Where that section by its influence in the legislatures converts a behaviour into crime, when it is not so accepted by the general sense of the community the community will resent the enforcement of the law and in practice evade it

The general sense of the community is distinct from the individual sense of the members constituting that community. And when it is genuine it acts with great potency. This truth I learnt, when once the Government of Bombay, out of a meticulous regard for fairplay suspended the sentence of convicted gamblers for two weeks to enable them to settle and wind up their genuine business. The whole city of Bombay,—the rich and enlightened citizens of which must needs resort to the turf club or play bridge, and where the bulk of business in most bazars is dealing in differences,—was indignant! And rightly. Whatever the individual outlook the general sense of this city—the real genuine general sense—was outraged.

IV

In matters relating to criminals and criminal justice our outlook is still largely traditional. The underlying ideas are retribution and deterrence and not cure. The criminal law proceeds upon the principle that it is morally just to hate criminals and it confirms and justifies that sentiment by inflicting upon criminals punishment which

moment of arrest till he is reabsorbed in society after the expiry of the sentence.

The Bombay Probation of Offenders Act, XIX of 1938, was perhaps the first legislation in the country which enlarging the scope of section 562 of the Criminal Procedure Code required the Court to take into account, 'the age, character antecedents, physical and mental condition of the offender the nature of the offence and any extenuating circumstances under which the offence was committed, and authorized the courts to let out adult convicts on probation in fit cases

The mere fact that an offence is committed should not attract the penalty which the law provides. I came across a well-educated, decent, young man who is now spending fifteen to twenty of the best years of his life in gaol, he cause suddenly frightened by what he thought was an attack by the villagers, he let go a gun which was handy and shot a man. Had he been let off on parole he would have perhaps been an asset to society

The dangers of awarding the same penalty to the casual criminal as to the habitual are too real to need comment. He is sent to jail he is herded with habitual criminals he is put through the paces of a rigorous jail system and is ultimately flung out of jail as an ex-convict. The world no longer recognises him as a respectable man. He is treated as unsuited for decent employment. What is surprising in that having nowhere to go he should return to his friends in jail? If the law had at the beginning of his career when he first slipped into crime given him the opportunity to resume his place in society perhaps he would never have gone back to jail.

The success of the probation of Offenders Act will depend upon, first, the selection of probation officers trained to investigate scientifically into the causes of crimes; and secondly, on the aptitude which the magistracy may develop to adjudge the criminality of an offender in the light of the circumstances which may have contributed to the offence.

It is doubtful whether provincial governments in India with their restricted resources would be able to set up a department of paid probation officers. But it is possible to enlist a number of selfless workers who may be prepared to undergo the necessary training and undertake the work.

The selection of Magistrates under the new system will present great difficulties. When justice is individualised, the Magistrate has almost unlimited discretion, and the supervision of the higher courts is bound to be less effective. The healthy vigilance which the bar exercises on the court's decisions will also have less scope when the facts to be judged are so imponderable as social and economic conditions.

VI

The outstanding reform in criminal law in the direction of individualisation of justice has been as regards the child delinquent. Bombay has done notable work in this direction. The Society for the Protection of Children in Western India was founded in Bombay in the year 1916 and the Children's Aid Society in the year 1926. In 1924 the Bombay Children's Act was passed.

The treatment of the child delinquent under the provisions of this new law begins as soon as he is taken up in the streets. The policeman does not merely arrest the child but takes charge of it as a guardian. The Remand Home where the delinquent is housed is not a lock-up, but

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a place where under sympathetic treatment its temperament and antecedents are investigated by trained probation officers. Before the Juvenile Court the trial is conducted with a view not to punish the delinquent but to ascertain why the offence was committed and to determine by inquiry into its nature, character and social conditions, the course of treatment which it requires. The Court, unlike ordinary Courts, assumes that the offender is more sinned against than sinning. The social and economic factors involved in the commission of the offence and the life history of the offender which are inadmissible in an ordinary Court of Law are admitted as contributory or explanatory factors in the commission of the offence. Unlike other Courts the Juvenile Court acts on its own initiative, sends out its probation officers to investigate the circumstances which would explain the delinquent's conduct. The procedure is not strictly legalistic.

When convicted the delinquent is regarded not as a criminal to be segregated but a potential asset to the community to be protected for future benefit. The end of the trial is not punishment but the protection, correction and education of the delinquent. The treatment is individual; it is determined by the needs of the particular delinquent. After punishment the offender is left in his own home or with a friend on probation where he is watched over and guided or is housed in institutions where he is trained under healthy surroundings for a vocation.

The Children's Aid Society has for some time started an ambitious programme which if fulfilled will continue the treatment of a child delinquent till rehabilitated in self respect, he is settled in the country as a villager or in the city as an artisan. It also hopes to establish if funds are forthcoming, a Home for Mentally Deficient children.

which if founded, will be the first institution of its kind in India.

Incidentally, this experiment may influence other aspects of criminal reform. For the moment, it is essential that scientific treatment of the child delinquent should be introduced in the whole country on a uniform basis, for, on the success of this experiment will depend the extension of this method to other classes of criminals.

VII

"Criminal Tribes" are also a problem of criminal law in this country. These tribes are either wandering or settled. In the Province of Bombay, their total population is over 11 lakhs though only 12,000 individuals are subjected to restrictive treatment under the Criminal Tribes Act of 1911.

Since Lombroso's days it is recognised that one of the causes of crimes is found in heredity. The view held by enthusiasts that the members of such tribes will become well-behaved members of the society is as fallacious as the other view that a tribe as a group should be dealt with by executive orders as a danger to society without waiting to isolate the criminal members from the harmless ones. In the course of its investigations into the administration of the Criminal Tribes Act of 1911 the Committee appointed by the Bombay Government—of which I had the honour to be the Chairman—came to the conclusion that the criminal tendencies still existed in many tribes in a marked degree though they have been controlled to some extent; and that the children of criminal tribesmen after years of education in the settlement schools often disclose a tendency to commit crimes.

The administration of the Criminal Tribes Act at present is dominated by the desire of the police officer to shorten his labours by imposing wholesale restrictions on a group, by classifying it as criminal, because some of its members have been proved so, a process of logic, which to the mind of the lawyer or the logician is the height of absurdity. Many of the Provinces are in this matter far behind the State of Baroda where one sympathetic police officer and one Gandhian worker have between them introduced a new technique.

The rigour of the law as at present requires to be relaxed. It is essential that there must be a quasi judicial inquiry before notifying a tribe as criminal. The system of restriction should also make use of the generous impulses and sense of self respect with which these tribes are often amply endowed. Today the haji system does not provide an incentive to good behaviour on the contrary it produces criminals. It should therefore be considerably modified and a system of classified probation should be introduced for registered members of non wandering tribes, providing for gradual but automatic relaxation of control over the well behaved.

One of the most important recommendations of the Committee was that the criminal tribe settlements should not be conducted by private agencies as was the practice so far but that the provincial government itself should undertake to maintain a department of trained Indian whose duty it would be to reclaim these men into civilized and honest life. If a new solution has to be adopted it must be sought through Indian agencies. In creating a new tradition for social workers it is likely that we may stumble that for a time our standard of efficiency may

become lower. But we must learn to solve our problems ourselves. We cannot depend upon foreign missionaries or foreign officers to spoon-feed us into a healthy social existence.

VIII

No scheme of penal reform aiming at individualisation of criminal justice would be complete without a change in the outlook of the police. The efficiency and sense of discipline of the police force in India under proper chiefs is unquestioned. But the problem for study is, first, to find out a method by which the police force now, either dreaded or hated, may come to be recognised as the most essential and helpful service in a democratic system; secondly, how, while on the one hand it loses its character as an alien army of occupation, on the other it may continue to remain untouched by party politics; and lastly how to control the lawlessness of some of its members in the shape of alliances with gambling, prostitution and other forms of racketeering.

Recruitment of better men, more scientific training, security of tenure and promotion and the confidence in the Government of the day are no doubt necessary factors which would lead to the betterment of the personnel and methods of the police.

But if any reform has to be achieved in the direction of individualisation of justice setting up a better and more scientific technique of criminal investigation is an imperative necessity. Some times the police officer in the district, knows no other method than torture. It is often not his fault; he knows nothing better. A severe sentence passed by the High Court on a Sub-Inspector for torturing the

accused unnerved the force for months! And in far too many cases crime is sought to be reconstructed in the Court by extorting a confession first and then creating evidence to fit into the story. In such cases if the evidence is looked at irrespective of the confession it often points to a different crime or criminal. But for want of a proper training the investigating officer does not bring forth some evidentiary link and in consequence the right man escapes or the wrong man gets into trouble.

IX

If a new orientation is to be given to criminal justice the administration of jails must undergo a change. The jail manual with which I have been familiar first as a convict, and then as a Home Minister and is a comprehensive code parts of which have distinctly outgrown their usefulness. The staff, without the background of theory or sympathy converts the jails into houses of torture. Bernard Shaw once remarked that judges, magistrates and home secretaries are generally of the view that criminals are very much better off in jails than outside and that they are positively pampered there. To cure them of this view he suggested that they should be lodged in jails for six months incognito to appreciate the difficulties of the criminal!

But on the other hand any sound view on penal reform must guard against the fanatical view which men like me who have been to jail are apt to take that all sentences are brutal that policemen and jailors are agents of an inhuman system and that as speedily as possible jails should be turned into public schools for adults.

The jail is an integral part of the machinery which maintains order in society. So long as

there are anti-social instincts in men restrictive custody under rigorous discipline is essential to social well being. Historically and by tradition it is a place where confirmed convicts are imprisoned and broken into social behaviour. It has a definite well understood place and should be allowed to retain it as decided deterrents to anti-social activities. If it is turned into confinement in comfortable sanatoria or a public school its dread will disappear, crimes will increase and the State will be saddled with the expenditure of maintaining the unemployed under conditions better than what the employed live under outside.

The best course, therefore, is to keep the occasional criminal in restrictive custody in a new type of jail like the 'medium security' prison in America where conditions approximate to normal life. The born or the instinctive criminal may be segregated in settlements where in company with his family he can train himself to lead an honest life under rigid supervision. But before such individual treatment is introduced, the jail staff must be better trained than at present and the prison classification must be made on more scientific lines by men who have been duly qualified for the purpose.

I will not go into the fascinating subject of punishment, of the necessity or otherwise of flogging and the penalty of death; and of indeterminate sentences. The after care of released convicts is also a subject which requires careful organisation. Only last year the Bombay Government formed a Provincial after-care organisation with its headquarters in Bombay. The question, however, requires to be considered by the proposed League in its all-India bearings.

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There is another important aspect of penal reform in which lawyers all over the country can help. Lawyers in India have done much to build the frame-work of the existing society. They have devised ways and means whereby old India has been able to accommodate itself to new conditions. They have had their fair share in the struggle for social emancipation. But I hope I shall be acquitted of a professional heresy if I point out that being a lawyer and promoting justice are not one and the same thing. Lawyers in India have failed to create an efficient organisation for the promotion of justice.

Like democracies all over the world the new democracies in India have been revelling in producing a mass of legislation, most of which create new offences. The Indian peasant or the small wage earner knows not when he breaks the law or how he can establish that he has not broken any. He is at the mercy of the police patil, the sub-inspector, the landlord or the money lender. In a country where he needs immediate redress the delays and uncertainties of law courts are notorious. Crowds of accused are still herded in filthy lock up. They and their witnesses have often to follow like chained slaves the district tours of itinerant Magistrates.

This the most distressful aspect of criminal justice can be altered by lawyers. If the Bar throughout the country awakens to its position as an instrument of an essential social service it can easily organise legal aid societies throughout the country. By free legal advice and assistance rendered systematically they can relieve the hard hips of the helpless who seek but cannot secure justice. Then will this important profession rise to the dignity

which is its due not only by its great importance but by the greater services which, if it is not unmindful of its duties, it will then be able to perform. Legal aid societies to be really effective must be social service institutions. This important problem of legal reform cannot be solved by lawyers alone. And lawyers alone can no more build up such centres than doctors can endow free dispensaries. It is work which requires the co-operation of society in its entirety.

XI

I have now dealt with most of the matters with which I am familiar. The subject of penal reform is interesting and wide. But a League, which has an all-India basis can only hope to bring all persons interested in it on a common platform, to provide a journal of research papers on any of its aspects, and by those very acts accelerate the process of synthesis. It can urge the cause of individualisation of criminal justice, and thus help in the adaptation of the law to new ideas. It can work for the introduction of the law relating to probation of offenders and an appropriate system of dealing with criminal tribes.

Above all the League can work, and with success, to have Juvenile Acts enacted, and Remand Homes and Children's Institutions established in all the provinces and states in India. It must not, however, be forgotten that the scientific treatment of child delinquency is a primary responsibility of modern governments. An association can only stimulate the conscience of the powers that be and co-operate where required. If we work at accomplishing this reform—and I trust Sir Maurice Gwyer will continue to help us—we may be able, with the sympathy of the Government of India and other governments, to establish an Indian Institute of Juvenile Research which would influence thought and activity in all parts of the country on this most vital subject

The CRIMINAL LAW OF INDIA

By

MR. ABUL HASANAT, I.P.

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TO talk of penal reform, to deliberate on the possibilities of bettering conditions for erring humanity while the innocent in countless numbers are being smashed and crushed, to think of amending laws which are but mercy compared with the laws that are being dictated, enacted, and executed almost in the same breath before people have had the time to know them, might seem a mere waste of energies over trifles. The world to-day is in a horrible state of violence and disorder. The intellectual and moral bankruptcy in our species which has ushered in yet another man-made disorder and one of an unprecedented magnitude, must be a terrible set-back to the humanist everywhere. Principles of civilized human relationship are being violated without scruple, man has renounced them in favour of the law of the jungle. "Has a conference like this any meaning to-day?" one may very well ask.

Our reply should be yes. Man must refuse to believe that our species is not going to survive and triumph over these passing stresses. Mad ambitions, meteoric careers, crazy delusions, world-violence—these make a vast show and noise but they are neither new nor abiding. They do not make for order and progress, neither do they turn the tide eternally backward. Scientific work and lucid thought, on the other hand, even though they have been driven below the surface of things for the present, will remain persistent and cumulative. They are not results of fits of passion. So, in spite of the blundering war, the social disorganization, the mass tragedies, we continue our deliberations with a hopeful eye to the future. Let us hope that in due course, however long and painful, the dead will be buried and the

sufferings instead of stifling progress will act as a perpetual reminder to humanity to renew attempts for a better world-order

The occasion of to-day's celebrations is the All India Penal Reform Conference. It is a momentous gathering the first of its kind in India. India has been great it has been representative of all that is great. Indian criminality also reflects the phases of all grades of civilization. The problem of crime deserves close study here. This Conference in its permanent organization, is meant to draw public attention to the treatment of crime. It is hoped that this subcontinent in due course will, by rational and progressive treatment, not only mitigate its own crime but also by handling the immense materials for study contribute to international thought about crime

The topic of the present discussion is the Criminal Law of India. In attempting a survey of the Law as it is at present I shall do well to indicate briefly the nature of law the previous criminal laws, and if and how the present laws demand a revision.

I must state here that the views expressed in this paper are entirely mine and they do not reflect in any way those of my department or of Government. This is an academic discussion which is expected to provoke the thinking public and result in action in due course—though, perhaps, not so very early

To begin at the beginning I may indicate here that primitive men were not very critical in their association of cause with effect. They came early in possession of a crude social ethics. There were commandments to obey and taboos to avoid. And individuals were there who, in their natural frailty broke these customary laws. The breakers were considered as sinners and criminals and were dealt with according to the prevailing practice. Punishment also arose out of the human instinct of pugnacity and emotion of anger. Thus conduct came to be regulated before man could think or question how best it could be

It was next considered that there should be a set of laws recognized so that there might be a sense of proportion between the breach and the punishment. It was also necessary to warn individuals as to what reward and punishment their conduct might entail. The priests and medicine men in modern sense thinkers and scientists stepped in with their crude primitive religion and the pagans followed. The entire order—the elders, chiefs, magistrates, priests and pagans all

took into account the existing customary laws and modified and adapted them to the fresh requirements of the developing society

Comprehensively thus, criminal law can be defined as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the State.

The main features of criminal law, then, are specificity, politicality, uniformity, and penal sanction

I need not enter into elucidation of these features which must be fairly intelligible to the enlightened gathering here The last feature, viz, penal sanction, is definitely on the wane at present.

I have not the time to discuss in detail other penal codes of the world,—not even the most widely-known of them Suffice it to say that the criminal laws of ancient Egypt, the Code of Hammurabi, the Hindu Code of Manu, the Hebrew Laws, the Twelve Tables of Rome, and the Muhammadan Criminal Law are all systems which command respect and have profoundly influenced human conduct at one time or another They have also deeply affected the making of other systems of law The present penal codes of the world mark a departure only in the feature that they are based less on authority and more on rational considerations

The criminal laws of ancient India present an interesting field of research We have no time to devote to them here We shall only mention in passing that the Hindu law had an evolutionary character, as much as every system had or has, that the outstanding law-givers, —Goutama, Vasistha, Apasthamba, Baudhayana, Manu, Vishnu, Yagnavalkya and Kautilya were all very acute thinkers of the ages they belonged to, and that the Hindu theory of punishment has been mainly deterrent and expiative, though the reformative feature was by no means totally absent A specially wise discrimination was shown by Manu in his treatment of the casual offenders and the hardened criminals The law of Vishnu breathed a more modern spirit The severity of the punishments was greatly reduced, presumably under the influence of Buddhism

The Muhammadan criminal law was based entirely on religious sanction The main source has been the Quoran and in cases not met

by it the Tradition sways. Cases failing these two both were decided by Ijma (agreed verdicts of Muhammadan Jurists) and cases still left out and the ever-increasing crops of them arising out of the rapidly developing social relationships were to be dealt with by Deduction. Jurists were to deduce them from the other sources by comparison and analogy.

Muhammadan law was marked by the religious stamp it was almost totalitarian covering personal and social duties and obligations and almost merging sin, vice, and crime together: it punished offenders temporally and threatened a revisionary or reversionary punishment in the other world and it restricted exercise of reason except in cases that were not covered by the other three sources. Islamic states generally are gradually drifting towards a separation of the Church and the State and the movement seems to be speeding ahead.

We now come to the present criminal law of India. I have studied it carefully in Appendix B of my book, *Crime and Criminal Justice* lately published and reviewed it in relation to other penal codes ancient and modern, and with reference to the causes, psychological and otherwise that lead to the specific forms of crimes it attempts to tackle. The Criminal Law Journal of India Lahore was kind enough to republish my discussion in their Journal in the form of a serial very recently.

I have taken this opportunity to discuss the topic summarily because I think there has never been in India such a gathering of jurists, lawyers, and others interested in crime law and penal reform and it is hoped the Indian public will be agog with interest to follow its deliberations. The importance of the general criminal code of a country is great enough, but it is still greater here in India now in view of the fact that the Indian Penal Code has remained unreviewed for nearly a century and India itself has lately entered into a new phase of political advancement and hopes for even more.

We are well aware of the confusion in which the law of crimes was being administered previous to enactment of the present penal code. This Code was originally and laboriously compiled by the first Law Commissioners of whom Lord Macaulay was the chief. The distinguished scholar joined as Law Member on the Supreme Council in 1834. The draft was submitted to the Viceroy in Council on the 14th October 1837. It was then discussed for or against and it was

and finally revised by a small committee. It was not, however, finally enacted till after some 25 years of its first conception. It was enacted in 1860 and became practically the supreme code of criminal law in India in supersession of all pre-existing rules, regulations and orders.

As the Code now stands it has been spoken of as a model piece of legislation. It made a most favourable impression and was considered a monument of the great genius of Lord Macaulay. Nor was Lord Macaulay himself unjustly proud of his achievement.

'This Code', wrote Macaulay, "should not be a mere digest of existing usages and regulations, but should comprise all the reforms which the commission should think desirable. It should be framed on two general principles—the principles for suppressing crime with the smallest possible amount of suffering, and the principles of ascertaining truth at the smallest possible cost of time and money."

As Sir James Stephen said, the Penal Code is simply the law of England freed from technicalities, and systematically arranged according to principles of arrangement so simple and obvious that they can not fail to suggest themselves to any one who considers the subject.

Let us strike a balance between the merits and demerits of the Code. The Code can claim credit on the following points:

In the first place, it did mark a splendid development over what passed for law before its time. The materials handled were enormous. They consisted of the existing systems of law in force, the most celebrated systems of western jurisprudence, especially the French Code and the Code of Louisiana, and other codes generally.

In the second place, it engaged best brains in its compilation and this was by no means hurried. The progress was slow but this afforded mature deliberation. It was criticized and improved upon by a host of contemporaneous authorities.

In the third place, the Code as it is, was wholly rationally conceived and compiled. Every single section has been argued at length and considered from all the angles. The brilliance of the reasoned discussions will not fail to strike one who peruses the reports and the wealth of illustrations portrays the picturesque narrator Macaulay. Perhaps the rationalistic conception has been the best point to the credit of the Code. Not a single provision has been adopted merely because it formed part of any old system. Non-conformity

with any provision of any particular religion has also paved the way for its wide acceptance.

In the fourth place, it marked in many cases an improvement over the English Law and other existing codes on which it was fashioned. Conceptions have been widened and safeguards provided precision has been achieved and hardship mitigated. New offences have been carved out with precise outlines out of old formless chaos.

On the other side, however there are many things to be said.

"Unfortunately the present writer" says Sir Hari Singh Gour "cannot join in these encomiums which have been lavished upon it by indiscriminating critics without close examination and it may be feared solely from the charm of the great name of its reputed author"

Exactly so.

The present survey is nothing in the shape of a close examination of the various provisions with a view to finding shortcomings but one in which I have offered only some criticisms in general terms. I have critically reviewed the Code, section by section in my book already

Macaulay's reputation itself is not what it was he has been convicted of historical inaccuracy of sacrificing truth for the sake of epigram of allowing personal dislike and bias to distort his views of men and incidents. As a picturesque writer he presented what he wanted to say in a very agreeable form. But he could not nor could he have been expected to, legislate for all ages. Since his time the world has run apace in thought. Apart from the limitation imposed by his time his Code suffers from various blemishes which could be removed from a revised Code to be now adapted

In the first place, the Chapters in many cases have been put haphazard and unnecessarily multiplied. Some of these could conceivably be amalgamated with others and all rearranged more logically

In the second place as Sir Hari Singh Gour observes the Code sorely needs rearranging, of its many sections which would seem to have been juxtaposed for no reason other than a mere chance. Some of the sections have been appended to Chapters rather than those to which they should reasonably belong

In the third place overelaboration has been the blemish of the entire Code. Sections have been run up and beyond necessity

Different circumstances of the commission of a single offence have been considered for new sections although they are really to be considered in each case by the trying court for apportioning the punishment under the original offence. I have instanced scores of such sections in my book.

To take a chapter, for example, we shall find in that for offences against the public tranquillity an over-elaborateness which would strike even a casual reader. Sections have been added only by imagining the original offence to be attended with some aggravating circumstances. Taken in the reverse order, sections 157 and 158 are seldom used. 153 is difficult to bring home and is almost a dead letter. 152 is meaningless, there being other sections, such as 332 and 353, which could be made easily to cover its ground. Section 148 could be washed away enhancing the punishment in 147 by one year. After all, 'being armed with a deadly weapon' is only an aggravating circumstance and circumstances like this may be many. Section 144 could be merged in 143 by raising the punishment slightly. The same relationship obtains between these two as between 148 and 147 and the same criticisms apply.

Or, take the next chapter of offences relating to public servants. What was needed was to provide against dishonesty and abuse by public servants and their abetment. Sections 162 and 163 could be merged together or even omitted by relying on the general provision against abetment and attempt. (Section 164 in such case could also be widened). Section 165 is a variation of 161 and might have been merged in it. Section 166 could be made wide enough to cover 167, 168, and 169. Section 170 could be dispensed with as the offender falling under this in its injurious forms might be dealt with under the offence of cheating.

When I say that one section could be merged in another, I do not mean that the two are already coincident in scope. I mean that the technical points made out for making them two sections instead of one are not so very convincing. What is the point in making a separate offence by simply counting one aggravating feature while there are many such features and providing a six-month or one-year, more while the maximum sentence passable is in each case comfortably high? It is some relief that the law makers stopped even at that and did not proceed to qualify an offence like Murder separately like

murder by day murder by night, murder at one blow murder at several, etc., etc.

In the fourth place, many forms of crime not actually existing or doing so only rarely have been ingeniously conceived and arbitrarily added. Many are the obsolete sections which could be quoted.

In the fifth place, many provisions of the Code overlap one another and while many sections are pedantically precise, others are bald and leave much to the ingenuity of construction.

In the sixth place, the maximum punishments laid down in many places have been so liberally fixed that the actual punishments inflicted in courts almost mock at them. The punishments in many cases run conveniently by whole numbers of years. The maximum laid down is hardly ever approached, far from anybody contemplating to outstrip it. This is a limitation which will confront all legislators at all times but in the case of the present Penal Code it does give the look of a 'bargain theory' of justice. It would have saved much length if the offences were well defined and a chart were to indicate the maximum punishments in the various cases. Punishments laid down in many cases, have, again, been anomalous and in many draconically severe. I have instanced cases in course of the discussion in my book.

In the last place, the law relating to suicide, abortion, unnatural offence, and adultery has to be re-examined in view of the advanced, enlightened and progressive outlook of the present times. I have indicated the nature of the growing opinion relating to these topics.

The Code, as it is, is reminiscent of Indian conditions and Indian thought now a century old. The world has moved apace and the Code itself in consequence has grown out of date in many of its parts. By saying so I am only inviting thinking brains to the need of a thorough revision and re-examination now long overdue.

Unfortunately it has been so far thought sufficient to amend a section here and add another there. This has only added to the bulk of an already bulky code.

To quote a progressive thinker *the moral code, in so far as it is taught in education and embodied in public opinion or the criminal law should be carefully examined in each generation, to see whether it still serves to achieve desirable ends, and if not, in what respects it needs to be amended.* The legal code like the moral code

should adapt itself to changing circumstances, keeping the public good always as its goal

We know that we have travelled far away from the old school of thought which laid emphasis on the illusory idea that a criminal weighs in his mind the pleasure of his action and the pain of the social reaction and acts on a finding at which he thus arrives. Modern criminology has sapped the very foundation of this idea. A multitude of factors, internal and external, urge him to the commission of crimes and if there be any friction within him, it is furnished by his own ethics, coloured though they be by religion, upbringing, and surroundings. The Indian Penal Code as a mere deterrent to the ordinary criminal must prove very poor as any code anywhere.

The Indian Penal Code in its present bulk, though perhaps sufficiently precise in its definitions and provisions, does present intricacies which it requires Full Benches of High Courts to solve. Lawyers cudgel their brain over many of its provisions and the whole code to most of them is a work of reference rather than one to be carried in the head.

This being the case, we cannot look upon it as an ethical code for guidance of the people. That must be a different thing, although the two codes must progressively come nearer and nearer to each other.

"How then," it may be asked, "do we go by the legal maxim, 'Ignorance of Law is no excuse?'"

It has been sought to explain that everybody must know the law, since living in organized society implies that the rules of the society must be known and respected. This is true but we must not impose on all a burden which none or only few can bear.

My explanation is this. Every legal code respects the prevailing moral values of the society. These may change and the law must also in consequence change. But the law in itself is only a codification for guidance of the society, more properly, of its agents in dealing with crime fairly.

Thus, a man commits a crime. He has not the faintest notion of what the ingredients of his crime may precisely be, what section of the code will apply, and what punishment he may ultimately merit. Almost in the same position is society. Provided the law is in conformity with the prevailing moral conceptions of the society, both the

individual and the society will know that a wrong has been done. Society as it does now wants the individual to be dealt with. Then the matter goes out to society's agents who are in the place of experts. The judge finds out what wrong the man has committed and for his reference the judge has the Penal Code. It guides him in assessing the enormity of the crime and in imposing the punishment.

Thus, I should think the principal penal code must reflect the prevailing moral values and the punishments the degree of social disapprobation. Although grave consequences will be involved, everybody shall be accountable not under any such legal fiction but in view of the fact that a wrong has been done and society is conscious of at least this much.

Thus, sociologically crime is the infraction or violation of established or codified custom or public opinion at a given time. In this sense, it is always a shifting thing a part of which always stretches ahead of legal enactments legal crimes always embrace certain forms of conduct from which the odium of disapproval has fallen away. Hence, the law should keep pace with public opinion public opinion cannot cling tenaciously to old laws. What will move public opinion is a variety of things, the sumtotal of which may be termed progressive development.

The quasi-criminal acts do not involve such grave consequences and people will acquiesce if it is pleaded that one can learn at one's cost.

In these views of the matter I think we can leave out many pedantically differentiated sections merging them under a covering one, allowing scope for the judges to use their discretion. Nor would there remain need for imagining forms of crime not prevalent at the time, merely because they may come to prevail in future. As a matter of fact, too many threatened punishments create indifference. One must not imagine that every coarse or vulgar act, every little violation of right, may demand suppression by punishment. The state, like the individual, must learn to endure many minor inequities it must remember that the world will not immediately come to an end and it must have confidence in the firmness of its own position and in the natural effective power of moral opinions. Where there is a progressive increase of penal statutes or of the severity of the penal statutes it is not well for freedom.

As Sir James Stephen observes, the reasons for having fewer laws are obvious. By extending the sphere, we make life most intolerable. All mankind would be criminals, and most of their lives would be passed in trying and punishing one another for offences, which could never be measured and compassed rightly.

I have been playing for sometime with the idea that perhaps a far less cumbrous penal code for all-India could be devised by providing for the few fundamental offences and then leaving them to be combined where necessary. For the general Penal Code I would enumerate the offences that have been traditionally and almost universally considered as crimes as opposed to the quasi-criminal and ever-increasing minor offences which should be included in a compendium of minor acts.

A code should be amenable to additions and amendments as deemed expedient from time to time but it should be thoroughly revised after a sufficiently long span of time, say, every fifty years, from the angle of view of progressive penal philosophy and allied social sciences.

A code is a guide for society's agents. Society will be guided in its conduct by ethical conceptions and moral values which the law will only reflect and not impose. Both will be changing and law will follow the prevailing conceptions of social conduct and not precede them.

A re-examination and revision of the Indian Penal Code will not necessarily involve India in fabulous costs. She would be in no need to indent for brains from outside. A small commission of eminent jurists, judges, lawyers, and criminologists available in India already will adapt a new code far in advance of the present one. It will have the advantage of consulting advanced codes of law of the world and an experience of having worked the present Code in India for about a century now. Happily, the High Court Judges have pronounced views from time to time, all of which are on record. These views will be of great help. The Commission will also take account of the present condition of life and society in India. In view of the expected federation, it will be wise, nay incumbent, to have on the body of the Commission enlightened representatives of the Native States.

I earnestly wish the matter of revision of the Indian Penal Code be taken up early. The changes in the substantive law will necessi-

as numerical tables to be learnt by rote, or superstitiously as eternally valid commandments revealed on a rock.

In saying so, we are by no means belittling the achievements of those master-minds that have given us a beautiful code and one which was far in advance of most of the codes of the world at the time. We are only maintaining that neither Moses nor Macaulay could legislate for all time to come.

I would be glad to hear or read discussions by others interested in the topic of the present discussion, papers and journals joining hands as well, and to see the accentuation of public opinion in favour of a thoroughly recast and completely revised penal code for India.

Towards a New Penal Theory

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THOUGH crime is as old as society and punishment as old as crime, yet our conceptions of crime keep changing with the changing civilization. This is but natural. Social values undergo change in the course of time, and as a consequence, new crimes appear while some old ones disappear from statute-books. This aspect makes it clear that crime is not something fixed or immutable. It is relative and the sort of conduct penalized by law depends upon what legislators regard as requiring legal protection.

The recognition of the relativity of crime has helped to turn our attention from crime to the criminal. Beccaria, the founder of the so-called "classical school", maintained that punishments for the same offence should be identical, and that the only justification for punishment was its influence as a deterrent to anti-social conduct. On the other hand, Lombroso, the famous Italian criminologist, believed that there was a distinct criminal type, that the criminal was born, not made, and further that there were certain 'stigmata' by which the born criminal could be recognized. Though Lombroso's theory has now become more or less obsolete, it did help to direct scholars to the study of the criminal rather than the crime.

During the last century thousands of scholars,—anthropologists, psychologists, psychiatrists and sociologists,—have been engaged in a search for causative factors in crime. They have compared criminals with non-criminals with respect to intelligence, physical traits, habits, mental abnormalities, emotional stability, personality traits, habits, social attitudes and environment. They have studied fluctuation of crimes in relation to economic, climatic and cultural conditions.

As a result of their ceaseless research, we have at present valuable books on criminals, delinquent youth and the causes of their offences. We now recognize that mental defect, suggestibility, physi-

cal defects, certain mental diseases, mental conflicts, deficiencies of the "moral sense" excessive vitality habit-forming drugs, heredity broken homes, irreligion, lack of recreational facilities, juvenile "gangs" poverty child labour mobility unemployment and so forth may cause an individual to commit a crime.

Crime, however is not the result of a single factor it "springs from a wide variety and usually from a multiplicity of alternative and converging influences." Crime is the "joint product of an individual and a social factor" or as W I Thomas expresses it "of an attitude and a value" The personal causes of crime are those which exist in the individual but which ordinarily do not give rise to an anti social act unless there is something in the environment to stimulate it. Modern methods of crime reduction are therefore not only preventive but therapeutic. The former aims at the removal of stimulants of crime from the environment, and the latter at the eradication of criminal tendencies in persons in whom it is already manifest

The new penal philosophy, which recognizes the social and psychological factors involved, has revolutionized the concept of crime and has provided a new goal to humanitarian and reform movements. As a result, the worst abuses in penal treatment have been corrected in progressive countries of the world. In response to the demand for correctional treatment fitted to the offenders' need as well as to that of society indeterminate sentences have been introduced, probation has been made a substitute for imprisonment in the case of certain classes of offenders and the institution of parole has also been created. The very concept of crime has undergone great modifications. Special courts have been set up for the criminally insane, the defectives, the juvenile delinquent, first offenders, women offenders and recidivists. These are all new trends in penal reform. In these directions experiments are being made to discover the best methods of crime prevention and of reforming the criminal.

Unfortunately in India punishment, and not prevention, still absorbs the major portion of the activities of the police, the court and the prison. In the jails, the young and the old the beginner and the habitual, the petty offender and the serious criminal, the sick and the healthy male and female are found confined. It is, however encouraging to note that in recent years some innovations have been introduced. We have now juvenile courts in some cities the probation

system has been adopted here and there, some reformatories have also been brought into being. All these are meant to make the penal system more progressive.

But we must bear in mind that all these will remain largely as pious aspirations without a proper penal philosophy to integrate all our progressive measures, to re-examine them and modify or develop new programmes to achieve the goal in view. The new penal philosophy must become the common property of every one who has anything to do with our penal system. Until then the new steps we take will not lead us to our goal, and the police, the court and the prison will meet with little success in reforming the criminal and reducing crime.

Much of our failure to rehabilitate the criminal is due to this lack of a new penal theory. Our penal system is built on the old principles of Retribution, Deterrence and Reform. The retributory principle is based on the idea that society should, as a matter of moral justice, make the criminal suffer in proportion to the enormity of his crime. It advocates a kind of moral "compensation for injury wrought." But it is not easy to apportion punishment according to crimes committed, since every act arises from a complex series of incidents and influences.

Similarly, the principle of deterrence has been found wanting. Even now it seems impossible to say with certainty whether deeds of crime have been lessened by the experience or fear of punishment. The figures of repeated convictions do not suggest that imprisonment deters. In Massachusetts in 1921 of all the prisoners sent to the various institutions, 51.3 per cent, and in 1922, 55.1 per cent were repeaters. In Wisconsin in 1920, of the inmates of the State prison 45 per cent were recidivists. So also recidivism features prominently in Indian criminal statistics. In Bengal, for instance, 22.39 of the total number of convicts admitted were repeaters. These figures show that a great bulk of modern crime is being persistently repeated by the same persons, and that punishment does not deter them. Even if deterrence does operate, is it a healthy influence for the individual or society? Deterrence does not improve character. Fear of the consequences may prevent the committal of a particular act but, if the attitude of mind is not changed, the repression of anti-social conduct in one direction will only find expression in another direction.

If we now turn to the principle of Reform, we find that the

punitive and deterrent aspects of prison treatment destroy almost completely the effects of the few influences which are meant to be reformative. Repression and fear the traditional methods of reform, cannot but fail to bring about the desired result. "If you are to punish a man retributively" says George Bernard Shaw "you must injure him. If you are to reform him, you must improve him. And men are not improved by injuries." If we are really sincere in the object of reform the motives of punishment and deterrence must be entirely eliminated from our treatment of prisoners for the ever increasing numbers of repeaters clearly show that these methods have served little, if any useful purpose.

The new penal philosophy compels us to look upon the criminal as a sick man, and to give him individualized treatment. In other words, it instructs us to approach the problem of moral ill-health just as we approach the problem of physical or mental ill-health, that is, to seek to cure the criminal by personal treatment. Besides providing individualized treatment, we should seek not only to remove the social causes of crime by public preventive measures, but also to isolate the criminal, whenever necessary until he ceases to be dangerous to society.

To this end, we must reform the police, the court and the prison. The police system must be socialized, and police women must be appointed to deal with juvenile delinquents and women offenders. And the police officers, men and women, who deal with crime and criminals, must be well grounded in the fundamentals of sociology and psychology and also in the essentials of social work as applied to police service. Such training should be given not by police departments but by the University or the School of Social Work. The police methods of arrest, detention and the like also need to be reformed.

Further the legal aspects of the court procedure is much over emphasized in our country. Since the criminal is as much a psychological and social problem as he is a legal problem, the important thing to decide is not merely the question of guilt or innocence but of social health or disease. Hence the judicial administration should be terminated once guilt is established and proved. The sentence or disposition of the convicted criminal should be placed in the hands of those more expert than the lay court in matters of character and behaviour analysis. Therefore the courts must be specialized and the Juvenile

Court is a right step in this direction.

Similarly, various types of institutions adapted to the programme of individualized treatment must be established. The defective delinquent must be cared for in an institution modelled in accordance with their distinct needs. The insane must be sheltered in separate quarters. The "normal" criminals usually constitute the largest misdemeanor group, they are amenable to a scientifically planned programme of correction. The hardened recidivist is probably beyond redemption and should be segregated in a separate institution.

Some of such special institutions can be made self-supporting by adding to them industrial and agricultural units. In addition, each institution should be equipped with a hospital and attending physician, surgeon, as well as psychologist and psychiatrist. These changes cannot be brought about over night, nor can they be brought about by sentimental social workers. These reforms can be effected only when the public is educated to see the evils of the present system. It is high time that our colleges and universities, law and medical colleges not only introduced criminology into their curricula but made their information available to the public.

Further, we need a Penal Research Institute to enlighten the public. It must undertake crime surveys and make critical inquiry into the operation of our criminal administration of justice, and provide scientific information to the public based upon its findings. Since crime involves social and psychological factors which go to the very roots of our community life, it is necessary to undertake a systematic study of the social causes of crime, and devise ways and means of eliminating or reducing them. When the public is thus made aware that the present system "stores the criminal away for a few years to deteriorate, and then hands him back to the world to rob, cheat, and assault every weaker person who gets in his path," then will come a demand for a better system of treatment based upon the new penal theory.

Modern Trends in Penology

Dr. K G RAMA RAO, M.A., Ph.D. (Lond)

PROBLEMS of penal policy and prison practices have begun to engage the serious attention of the state and the community as subjects for systematic study and experimentation of a social and psychological character for just under half a century. There were even before no doubt crimes and criminals and punishment. But there hardly existed, if ever, an organised movement for penal and prison reform. No such movement could be attempted either with any hope of success. For until very recently the necessary foundation was lacking. The recent advances in the psychological and social sciences have made possible the building up of a system of thought capable of inspiring and sustaining developments in penal law reform. As a result there has been in evidence continual reorientation in our attitude to and conception of penal ideas and ideals and prison practices.

Yet a study of the basic facts of life would seem to lead naturally and inevitably to the conclusion that criminality is a permanent feature of all organised group life. The more closely knit socially and psychologically does communal life become the more subtle and intangible is the way of behaviour. In a complex social structure shaped as it always has been, on a trial and error fashion crime wave tends to become irregular, and the criminal mentality comes to offer increasing resistance to analysis and treatment.

This is so for a fundamental, though simple reason. The common background of man includes urges, wishes and thoughts that not only are not all in accord with the socially accepted code of behaviour and conduct, but show an inherent preference to move in the path of least resistance. Obstacles are resented, or ignored, oftener than not, most non-chalantly. The untutored or ill-tutored amongst us do not hesitate to spit on a public thoroughfare, or inside a railway carriage, when we are prompted to do so by a physiological reaction, and this we do quite unmindful of the indecency or unhygienic effect of the act of spitting. Or in a situation where we are face to face with a pretty looking woman do not most of us show signs of behaviour

which, but for our tact and sense of decorum enabling us to clothe our reactions in civilised garb, would be taken as social transgression and punished?

Now social aggression is possible, nay even inevitable, because there is social inhibition and control in the form of family communal and racial taboos,—the innumerable *dos* and *don'ts*. Societal code of behaviour and conduct which has perforce to accommodate them comes into conflict with the smooth, uninhibited flow of personal psychic life. There is thus always the possibility of the occurrence of social aggression, (and perhaps also undue submission and consequent demoralization of the individual.) Hence the imperative need on the one hand to investigate the motivating factors of personal and group behaviour in order to bring to surface the underlying social and psychological maladjustment, and on the other to direct effort continually to plan and institute preventive and correctional measures for combating forces, both personal and communal that make for anti-sociality as well as to meet the needs of a follow up programme.

Although the movement for penal and prison reform has come to stay yet legal considerations rather than considerations of mental and social hygiene would seem to claim priority in the attitude of the police and the magistracy towards these problems. They still seem to think and act in terms of fixing the responsibility for crime and punishing the criminal. Nor is the reason far to seek. The primary function of the law making and law enforcing agencies has always been to protect society against aggression. Towards this end society in the course of its development has progressively been laying down rules and regulations which a closer study would show to be the pooled, systematised and codified thoughts and wishes and urges of the generality of individuals comprising it. Whilst doing so it has to ignore the differences between individuals. For they are considered either insignificant and therefore of no consequence, or they are unwieldy of handling. Side by side provision is made for punishing transgression of these rules and regulations.

But there are questions that an inquiring mind can hardly resist the temptation to ask. For instance, why an act of transgression has taken a particular form, or committed by a particular individual was: compensatory or sheer aggression. These and similar questions the law maker and the law enforcer have so far never asked. But they

are questions that a student of Individual psychology, or for that matter any one who is interested in the study of man as man is tremendously interested in for the sake of his science and for the sake of humanity.

Outside of these circles, however, it would seem the social case worker as also the prison official with progressive outlook is beginning to approach the penal and prison problems not only on an enlarged social basis but from the standpoint of Individual psychology as well. The state as also the community still clings and acts with the full consciousness of the right and duty to self-protection. At the same time there is growing realisation of the need to prepare the social aggressor to lead a free life in common. These, in essence, are the twin objectives of the modern penal movement. There is a philosophy behind this movement, a penal philosophy, if it may be so termed, that considers crime a social concept and an act of criminality a defence-offence reaction directed against one's own self as not infrequently also—but on surface considerations always against the community, or rather against the rigidity and generality of its injunctions; the criminal a social aggressor—an individual per se, not a type, and punishment a correctional procedure through institutional maintenance work. The modern penal movement professes to undertake the study and investigation of the factors in the personal and social life of individuals and groups that are responsible for inducing crime-mindedness at different developmental stages. It is thought that the accumulation of data would enable us to anticipate the probable situations that are conducive to the commission of acts of criminality. An accurate knowledge of these situations (in this case the degree of accuracy being determined by the limits of social experimentation) is essential to guide us in the manner of dealing successfully with the social aggressor, which is possible if we have sufficient insight into the forces or tendencies in the personality make-up of the individual and in the make-up of the society that are responsible for social aggression, and whether they are amenable to treatment. The ultimate aim is to bring about saner and more stable social and psychological relationships between individuals and between groups thus lessening the cause for friction and conflict in our personal life and outside, in the wider field of community and national behaviour and conduct.

The modern movement has tended to find expression (1) through

legislative measures of a judicial character like the indeterminate and conditional sentence, suspended execution, release on recognition and on probation, release on parole, etc., (2) in the organisation and working of the preventive, institutional and after-care programmes and (3) by means of educative propaganda

The question naturally arises are the efforts of the state and of the expert on penal and prison matters as well as of social welfare associations showing results indicative of the degree of control gained over the incidence of crime? Are we any the nearer to our goal of assessing the success of the movement in terms of individual rehabilitation and not primarily community protection? In the West the modern movement has made steady progress, though in some countries temporary set backs have been registered. This seems to be due in the first instance to the slowness of the criminal law development to cope with the problems as viewed from the standpoint of modern penal philosophy. Secondly the tremendous expansion of the area of human behaviour and conduct and the relative unpreparedness of the agencies of the family and the institutions of religion and community opinion to control and regulate it. Added to these may be the lack of initiative and resourcefulness on the part of the state and the penal associations to make the public understand the modern trends in penal and prison matters as well as the purpose and operation of the modern penal and prison machinery.

In our own country prison practices have been receiving for some years now considerable attention in prison official circles. The prison heads in the provinces have met and have discussed prison matters, but primarily from the standpoint of prison administration. This is understandable. The prison official has had very little or none at all of the necessary background of theory with the result the modern tendencies were left severely alone.

With the advent of provincial autonomy however in some provinces notably in Bombay and the United Provinces penal and prison matters came to be viewed in the light of modern penal thought. This phase of the public awakening (there was an earlier phase which ran concomitantly with the interest the prison official shower over prison matters, and which was dominated by the sentimentalist reformer) registers a land mark in the country's progress in the direction of making the penal policies and practices scientific efficient and humane

Two things may be said largely to have contributed to this. The sentimentalist prison reformer is being slowly but surely swept clear of the field. But what is of greater significance, a serious beginning has been made in organising social effort and in professionalising the personnel responsible for directing and guiding that effort. Furthermore the claim of science to deal successfully with the penal and prison problems is winning recognition in ever increasing measure.

To the achievements of the popular governments in the provinces belong events like the expansion of the scope and functions of the Bombay Children's Aid Society, and improvement in its probation service, introduction of adult probation and the establishment of a Prison Officers Training School in the United Provinces. The interest and effort of the popular governments in prison and penal matters have combined successfully with the interest and effort of the leaders of scientific and humanitarian thought in bringing about the establishment of the Indian Penal Reform League, and active measures are being taken to form an all-India association of Probation Officers, an association for the establishment of mental clinics as adjuncts to educational and correctional institutions and a juvenile research bureau.

Thus the modern movement in this country has begun to spread its ramifications over a wide field within the short space of three years. Its future is assured. For, from its very inception, it has attracted the serious attention of eminent jurists, prison administrators, scientists and trained social workers. Provincial governments have not been slow either in recognising the soundness of its background and practicability and utility of its recommendations. This is particularly so in the matter of handling juvenile problems.

The principal agency through which the modern movement in India may be expected to achieve its objectives is undoubtedly the Indian Penal Reform League. The history of its beginning, its aims and objects and how it proposes to tackle the several penal and prison problems in the near future are set out in the address of the Convener of the first All-India Penal Reform Conference, which is printed elsewhere in the pages of this volume. It is true the Indian Penal Reform League has begun its labours at a time when events in the country are beginning to show signs of acting as damper on the social re-constructive movement. But the spirit of experimentation has come

to stay and organised thought is being built. Moreover there has been no lack of zeal on the part of the public worker. It is to be hoped that before long the present conflict in the Indian situation would be resolved, and that there would be appreciable lessening of the tension to ensure, as before, official co-operation with the activities of the public bodies and individual workers in the cause of penal and prison reform.

The Treatment of Prisoners.

By

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THE conception of right founded on relation to public good ought to be the criterion of punishment. That criterion alone gives rise to a "just punishment". The signification of the term "just" may be said to exist in the complex condition of an individual in society for the realisation of his capacity of contribution to the social good. If the former conception of social good as the criterion of punishment stands confirmed then no other theory besides that of reformation should be such as to emphasise more on the subjective reforms than on a mere physical restraint. The science of penology is based on the subjective personality and its reformation through the creation of environment and the treatment of the mental and physical maladies.*

Socialisation of the prisoners is the fundamental principle of penal treatment in theory and practice. Crime being a social phenomenon society cannot possibly avoid its responsibility in treating the delinquents in a rough-shod manner. The offender should be made aware of the violation of a right or omission to fulfil an obligation to society for which the punishment has been inflicted upon him. In truth the man must be given a chance to think and revise his decision if he be wrong otherwise the very ideal of reformation will be frustrated.** It should be recognised at the same time that the person in power may utilise his position to put an innocent person under the suspicion of society at large to satisfy his thirst for revenge. It may be said with impunity that society can and actually does put the reformers to innumerable troubles for their attempt to bring about a change in the prevailing order of society. It is an empirical truth as well as historic fact that the ordinary man cannot stand the idea of a rapid change in which they apprehend a loss of some material prosperity.

* Dr B K Sarkar *Political Philosophies Since* (1905);
For other reference on this subject see—

** By the author, 'Punishment' in *Panchajanya* (Chittagong 1934)
Saleilles's "Individualisation of Punishment" (London 1911)

The time has already come to place the ideal of rehabilitation before the penal legislation of our country. In the words of Dr Benoy Kumar Sarkar the truth of the aforesaid statement has been realised by the Indians as well, he relates that "Without reference to how much of the liberal recommendations have been implemented it is proper to observe that the Indian mind both official and non-official, was profoundly upto-dated in the categories of criminology and penology on account of the labours of the Indian Jails Committee."^{*} Many of the provinces are up and doing for the improvement of the prison condition. Some of them may be discussed here for the sake of our knowledge of the present condition so that one can chalk out the path to progress. The legislation has been so advanced since 1900 that one can easily attribute that it is running in the lines of reformation. The Local Government has got the power to grant to any person under sentence of penal servitude which may be indicated in the license. The license can be altered and revised by such Local Government as well.^{**} When such license remains in force without being revoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large in accordance with the terms of the license. The violation of the terms of the license shall bring him again within the purview of the recommitment. It is laid in the Act that when the licensee under section 21 of The Prisoners Act (Act III of 1900) be allowed to remain at large and he violates any condition so specified or knowing of the revocation of the license, neglects forthwith to surrender himself or conceals himself or endeavours to avoid arrest, he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

With regard to the lunatics, there is a special provision for treatment in the Act stated above. Section 30 of the said Act states that where it appears to the Local Government that any person detained or imprisoned under any order or sentence of any court is of unsound mind, the Local Government may by a warrant setting forth the grounds of belief that the person is of unsound mind order his removal to a lunatic asylum or other place of safety within the province

Dr B. K. Sarkar "Sociology of Crimes and Punishment" in the Calcutta Review Jan 1937

The Prisoners Act (III of 1900) as amended up to 1974

The patient is kept under treatment by the qualified medical officer till he is certified to be free from the maladies

As the convict labour is waxing on the one hand, the complexity of its administration is becoming keener on the other. The truth according to the modern science, which recognises work not only as a therapeutic means but also as a social means of re-education and treatment, is to bring back the normal life of a délinquent. The abnormal number of the illiterates among the Indian convicts is really appalling. The discussion of the statistics of the prisoners (as printed on page 95) may prove that illiteracy stands in the way of rehabilitation in the proper sense of the term in India.

It may be noted that though work is an essential element in the socialisation process of a convict it should not be of such a nature which baffles the very principle underlying it.

The interpretation of the term "work" has been made differently in different countries.* Japan includes exercise, instruction, appearance before the court, even the interrogation by the outsiders within the category of work. But the same has been taken to mean by the authorities of the Swiss Cantons as the work of the free industry alone. With regard to the hours of work in the prison there is contradiction of opinion. Some are of opinion that the hours should be varied according to the nature of the sentence so that a proper correction may be expected. Others are of opinion that there should not be any difference of period of work which may tell upon the mind of the prisoner. The maximum hours of work in England is ten. The Berne Commission basing on the minimum standard rates has insisted upon fixing a maximum period of work which may vary according to the nature of sentence. In determining the period of work the nature of the convict as well as the nature of work itself should be taken into consideration. Along with it, suggestion may be made to make an investigation of the physical capacity of the convict to bear the strain of work. With regard to the question of relaxation of the prison labour the Berne Commission has recommended that every prisoner should have the opportunity of satisfying the needs of his religious life. In America Sunday is observed as the day of rest. Certain day is preferred to be kept reserved for the betterment of the outlook of the prisoners.**

* Ruggles—Brise Prison Reform at Home And Abroad

** The Annals of the American Academy of Political and Social Science, Sept 1932 (Prisons of Tomorrow)

Rehabilitation or socialisation calls for special arrangement for the society people to mix with the convicts so that the idea of their complete separation may not be imprinted on their minds. The idea of going back with a clean hand and their acceptance by the society is to be emphasised. The mental degeneracy of the inmates should be carefully avoided by the authorities. Society on the other hand should be so formed as to guide and sympathise with the criminals so that they may get an opportunity to become a real member of the society and offer service to it when they go back.

The method of treatment should be such as to remould the character of the offenders by scientific individualisation, productive labour and a social environment. The treatment should include physical exercise, mental and psychiatric study and the raising of the outlook of life. It requires an expert and sympathetic personnel—capable of noting the signs of reformation as distinguished from hypocritical imitations at the same time he is to inculcate the adaptation of social life along with the adaptation of the prison life.*

Experts in prison reforms cannot be had out of B.C.S. or I.C.S. or from the official staff. It requires a special study of different subjects allied to the scientific treatment of the delinquents. As the C.I.D. inspectors require regular training for their equipment during their probationer period so also the Prison Officials should get a training for the most delicate task of reforming the untrained and ill-trained group of people. Prison official should include the warders also who require training specially intended for the guidance of the convicts. So long we remained in an age of terror and no sympathy but the day has been dawned when humanity has the upper hand and it is now trying to give shelter to the criminals even who were treated as the outcasts of society. Italy has now taken the important lead in the line of penal reformation. America is fast proceeding in bringing about the best part of human life. England is also running in the progressive line of thought. Should India be lagging behind a century back? It is high time to organise such an institution which may instruct the official staff of prisons in the scientific line to handle the delinquents. A laboratory should also be attached with the institution for the practical study of actual cases. That sort of institution alone can serve the purpose of preparing the best personnel for

* The Annals of the American Academy of Political and Social Science, Sept. 1932 (Prisons of Tomorrow)

the administration of the reformed prisons. As the basic principle of penal reform is the individualisation of the delinquents it can never be possible without trained persons. They ought to be so equipped as to be in a position to determine and prescribe each of the prisoner such work that ultimately he can realise his real self.*

The following subjects may be prescribed as the minimum course for the training of the officers —

1st Year.

- (1) Psychology (Practical)
- (2) Biology (Rudimentary)
- (3) Kindergarten System
- (4) The mode of Treatment

2nd Year

- (1) Criminal Anthropology
- (2) Criminology
- (3) Case study (objective).

These subjects can be studied within two years after the completion of which a certificate can be issued to make the examinee eligible for work. Along with this suggestion can be made for the training of the special workers both males and females for the guidance of the juvenile offenders. Arrangement should also be made for the visit of different reformatories and prisons of the various countries of the world.

With regard to the methods of rehabilitation of the convicted persons it may be said with impunity that the social indifference and callous attitude stand in the way of the realisation of the ideal of the reformers. There should be training of each of the responsible members of society as that of the prisoners in the camp. To the objective conditions of the social environment which are in themselves hostile to the freed prisoners, if there would be added negative subjective conditions determined by the lessening of sociability through the preventive measures by which he has been surrounded, then a totality of unfavourable circumstances grow up to prevent the execution of

* For special reference as to the reforms of jails see Oppenheimer Rationale of Punishment 1913, Ruggles Brise Prison Reforms at Home and abroad, (London, 1924) Annals of the American Academy of Political and Social Science (Philadelphia Sept.) Dr B. K Sarkar, 'Sociology of Crimes and Punishments' Calcutta Review Jan. 1937

punishment from being useful either to the prisoner or to society. So two things are essential for the creation of sociability of the convicts namely—*Work and Environment*.

In respect of the system of the work of the convict labour the Quota system has been adopted by the civilised nations of the world. The task system or the quota system implies nothing but an assignment by law or by prison regulations of certain daily or weekly quota of work fixed in advance for each prisoner. The quota ought to be based on the average productive capacity of a healthy prisoner who is acquainted with the work. Another method of determining the quota consists in ascertaining the physical and mental ability of the convict to guard against any monotony of work, because the stereotyped work affects the psychology of a prisoner. Proper reformation cannot be carried into effect under a rigid disciplinary system. Discipline is to be dealt with only in an exceptional case because it may lead to turn the prisoner a blunt and shapeless one.

In addition to the nature of the work it may be said that in accordance with the new methods of penology we cannot forego the system of payment.* The treatment of mind requires it badly that remuneration should be offered for the work done by the prisoner. In that way they may learn and get into the habit of earning by honest labour. From the aspect of social circumstances it is also justified because the convict will not have the chance of thinking that he is dissociated altogether from sober environment of society. Thus the nauseous atmosphere of prison life and its sordid distinction with society may be overcome. Lastly they should get an opportunity of being initiated into the atmosphere of work a-day life. Thus socialisation and mental reformation can be achieved at one and the same time.

Environment is another important factor which affects the life of the prisoners more seriously than any other factor. It consists in the association of the prisoners and the atmosphere of their work. Association in the post-conviction and that of the pre-conviction period bring about a lot of change in the life of a prisoner. In accordance with the different stages of the reformation of a convict the prisons are principally classified in three forms in Prussia. The first is Entrance prison. The second is Advanced Prison and the third is the dis-

charge prison. Those principal prisons are again divided into different groups. The Entrance prison has been sub-divided into seven groups. They are (1) Educational Reformatories, (2) Convicts for petty offences, (3) Short Termed Convicts, (4) Special Camp for the Adult Offenders, (5) Incurable Offenders, (6) Feeble minded Criminals, and lastly (7) Political Offenders. In those prisons special care is taken for the mental condition of the convicts and the elimination of the incompatible companies. From the very nature of the classification of the prisons it may be observed that a good deal of caution has been taken to select the association of the inmates of the camp. The juveniles are not allowed to mix with the hardened criminals neither the political offenders are permitted to come in contact with the offenders for petty cases.

In Italy the prison camps are generally situated in the free and open area where the natural beauty is prodigious. The beauty of nature when combined with the best method of employment produce a salubrious effect. Thus the convicts begin to imbibe the habit of better outlook of life. It is an undeniable fact that there is a type of hardened criminal who cannot be cured under the ordinary treatment of prison life. Scientists prefer to keep them in perfect isolation so long their wrongs are not cured perfectly.

It is necessary for the sake of classification of prisoners in the same camp to make homogenous group. An introduction of the Progressive System in prison treatment may bring about a good effect. Progressive System implies that cases which require disciplinary action may be relaxed gradually as they show signs of reforms and readaptation*.

Juvenile offenders and their treatment call for special attention of the reformers. Instances of the advanced countries like Italy show that private organisations like the National Association for the protection of the Maternity and Infancy, the Avanguardista, the Piccola Italiana have done a great help to the countries' cause. Private organisations on humanitarian line for the upliftment of the fallen are very scarce in our country. The establishment of the reformatories like the Borstal Institution of Bankura as well as that of the Alipore,

* The Annual of the American Academy of Political and Social Science, Sept 1932 (Prisoners Of Tomorrow)

* By the writer "International Prison Legislation with special Reference to Labour" (1934)

are the effects of Government action. If proper guidance under the trained and sympathetic persons could be given to the inmates then a better outlook would have been produced. In spite of the handicaps existing at the present moment we should try to overcome them and proceed on and on. Some of the supplementary actions may be effective to realise the goal. Well furnished libraries meant for the young boys and instructive journals are essential for the improvement of the inmates. Outsiders should be allowed to visit the reformatories more frequently than at present. Sympathy and good talks are essential for the recovery of socialisation. Lectures and educative films are also counted as the next line of defence against delinquency.

The problem of juvenile offenders is not an easy one to be treated in a short space or in a haphazard manner. It requires a special study and a good deal of equipment for the scientific line of work. Even the most advanced countries are in the experimental stage rather than reaching any final formula. For the sake of humanity we can not forego the treatment of our brothers who have been chanced to be led astray. The whole social force should be concentrated to bring about the salvation of the poor and unfortunate.

Province	Age						Education.			
	Under 22 year		22 to 40		40 to 60		Above 60		Literate	
	M	F	M	F	M	F	M	F	M	F
Madras	3,488	162	24,535	1,288	5,706	474	598	46	5,724	4
Bombay	1,721	87	14,526	302	2,141	96	152	15	3,579	3
Aden	110	1	205	6	26	1	67	...
Bengal	5,467	81	27,592	532	6,131	175	550	16	7,263	15
U P.	3,139	64	21,933	280	6,187	128	573	8	1,042	3
Punjab	3,681	35	23,324	234	4,625	55	620	3	1,485	2
Burma	2,658	99	15,732	589	3,801	198	373	24	16,703	151
Bihar & Orissa	3,439	75	14,602	407	3,805	156	1,228	43	2,515	5
C P. & Berar	519	22	60,66	192	1,152	64	60	2	1,228	1
Assam	429	9	3,707	42	962	19	80	3	161	1
N W F P	1,254	43	5,580	93	1,083	11	153	...	224	...
British Beluchistan	93	2	749	8	73	2	7	...	85	...
Ajmere Merwara	18	...	504	14	68	3	5	...	102	1
Coorg	4	...	54	2	6	...	1	...	27	...
Delhi	237	...	769	9	132	1	28	...	130	...
Total 1935	26,257	580	159,878	3,998	35,878	383	4,428	165	40,336	186
" 1934	24,338	721	151,628	3,758	34,753	1,204	4,356	121	40,518	321
" 1933	27,618	924	153,067	4,167	33,687	1,266	4,211	150	46,006	579
" 1932	45,347	1,428	173,246	5,153	35,699	1,460	4,681	157	74,624	2,274
" 1931	25,668	717	141,464	3,191	31,146	1,133	4,080	168	41,166	435
" 1930	38,900	679	146,514	3,125	29,974	858	3,401	87	68,497	656
									186,125	
									174,527	
									172,577	
									184,349	
									161,192	
									150,292	

(Statistical Abstract for British India 1926-27 to 1935-36 pp 271)

The Problem of Under-Trial Detention

By

ABUL HASANAT, LP.,

Superintendent of Police, Rajshahi, (Bengal).

AT the very outset, I must make it clear to all concerned that the views expressed in this paper are entirely mine own. They should be construed as an expression of opinion by a private researchist who is only calling attention of the Indian Public and the Administration to the problem of under-trial detention.

An outstanding feature of the criminal law is the penal sanction. A criminal is brought to justice and dealt with according to law. The course usually ends in infliction of a punishment or its equivalent.

It is beyond my scope here to detail how the process of rendering criminal justice evolved. I have done it in a study recently published and done it in some detail. In discussing the problem under review, we may start at the point at which a complaint has been made against a person or persons and the process of law has had a start. It is also enough if instead of a specific complaint having been laid by a person against another or other persons, the agents of law come to suspect the latter on reasonable grounds.

The first step may thus mean the arrest of the suspects or the accused and their intermediate custody or availability which has to be secured till they are tried out. In a few cases, such as in quasi-criminal infractions, the accused are given notice or summons to appear on a fixed date or dates and in the meantime they remain free. In many other cases, the need for detention before trial arises.

This need arises from the fact that the person charged with a crime should be available for trial after the police or other agency has sifted the case against him. In England and some other countries arrests are put off for as long a period as is possible. Hasty arrests are deprecated. In India and perhaps France and Germany, the reverse has almost been the case. I am not speaking of present-day Germany where the principles of criminal justice do not come for much consideration. In India fortunately Governments have now

taken steps against hasty arrests on a hit-or-miss basis and matters are improving. Even then there will be need for under-trial detention and the problem has to be attacked to see if it yields any solution or palliative.

The evils of imprisonment are manifold. I have discussed them in my book. At the present moment, however society has no suitable substitute for imprisonment either. It can only look for processes that will mitigate the evils.

We know that prisons are generally corruptive and especially for first offenders and young offenders. The problem of the undertrial prisoners takes its import from this fact.

The under trial prisoners, some of whom are innocent and many are ultimately discharged should not be huddled together or at any rate placed in the same jail as convicted ones. This is a matter of great importance and is recognized as such almost everywhere. It is important in India where a large number of persons were and still are arrested on suspicion or accusation during the stage of police investigation and detained till the cases are sifted and sent up for trial. Unfortunately in the past arrests were made indiscriminately liberally and in heinous cases still more so by way of striking terror into the hearts of possible criminals. This antiquated idea is being discountenanced at present. Almost the same state of affairs, or I should say worse, obtains in the United States. Sutherland states that 60% of arrests in certain states in the United States result without prosecution and in addition between a third and a half who are prosecuted are discharged without conviction. He states

The police constantly break the law. The laws of arrests are rigidly limited but the police exercise their authority with little reference to these limitations and in violation of law. Hopkins refers to illegal arrests as kidnappings and in this sense the number of kidnappings by the police is thousands of times as great as the number of kidnappings by burglars and robbers.

With the present move by Governments against hasty arrests affairs in India are bound to improve. The question will, however remain open till Houses of Detention are separately maintained. Such Houses are prisons only in the sense that persons are temporarily detained in them but they are by no means penal institutions. They should be sharply differentiated from the latter and be much more

comfortable in-as-much as persons detained are in many cases not criminals but merely defendants in criminal cases with prospects of being declared innocent

A note of discord can here be struck by persons who do not relish the idea of providing any comfort for these people at all. They may suggest that the case for there being hardships at this stage of detention is not so very weak in-as-much as a large number of really guilty persons escape punishment on account of technicalities of law. The people detained, they may contend, should, therefore, suffer at least this much of hardship as a deterrent to themselves and others. The difficulty, however, is that the innocent also suffer along with those and nobody should be so zealous that the people should be kept innocent by punishing the innocent. The method again reacts badly as it has in India. People will be so scared as to abscond during the period of enquiry so that in case the police cannot send them up in chargesheet, they will have avoided much hardship by simply hiding themselves for a few days. It is a remarkable fact in India that wanted persons in even trivial cases easily abscond to the surprise of all concerned in bringing them to justice. This practice has been due in some extent to the alleged rough handling on the part of the police and possibly the indignity of being locked up. With a state of affairs more in consonance with refined methods of treatment, people will be less scared than now in facing and answering charges.

We shall sum up mitigating factors of the evils of detention before trial. It is most likely to interest the Indian public and the administration

1. The first and foremost thing to do is to reduce the number of arrests. It has been a standing reproach that in many parts of the world the police make arrests on a hit-or-miss basis and sometimes or always, put forward the excuse that this might have a salutary preventive effect. No such excuse is valid. A police investigation, as I have very strongly stressed in my book, should be looked upon as a preliminary step of rendering criminal justice and should not be confused in any alarmist frame of mind with any other direct preventive methods. We must admit that a certain number of extra arrests cannot be helped on account of the unavoidable frailty of all human institutions. They should, however, be kept as low as possible.

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We shall sum up mitigating factors of the evils of detention before trial. It is most likely to interest the Indian public and the administration

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The summons may be substituted for arrests in many cases as is

done in a vast majority of cases arising out of violation of traffic regulations. A man's liberty is as precious to him as to any other man and the utmost care should be taken to insure against unnecessary hardship being caused to anybody. Recognizance or bail with financial securities for return of wanted men should be made possible in an increasingly more number of cases. Even these two systems have got their limitations and we shall indicate them and suggest some palliatives shortly.

2. There should be a system of State indemnification for errors of criminal justice, as there is in some European countries. Sutherland has argued the case at some length. When the State deprives a person of his liberty for the sake of public welfare and when trial or enquiry shows that he is not at fault, the State should compensate the individual for loss of time and liberty. This should not be based on the principle of what is done in cases of exactly false accusations where heavy damages may be awarded but that of workmen's compensation laws spread the loss on the public rather than impose it on the individual. If this course is adopted, the indemnification should be in cases of innocence only and limited against excesses. Aside from the remedy for loss that this would provide, it would be desirable because it would tend to speed up the courts and would tend to create a public opinion favourable to a greater efficiency in police departments and in courts in general.

3. Dependants of those actually detained awaiting trial should be helped by the State. This follows from the above consideration as a corollary. This is a problem to which little attention has been paid and which is also likely to provoke strong comments as it seems apparently to suggest pampering of the criminal. On deeper analysis, however it will be seen that if there is no blame attachable to dependants in cases till they have been convicted, it is scarcely justifiable to penalise the family of a man so detained. I agree that this is a step which may not be conceded at once but at some future time when public opinion has been reconciled to saner considerations this may be made possible.

5. The courts should dispose of cases more rapidly. The longer the period of detention, the greater the sufferings caused particularly undeservedly to the innocent.

6. There should be increased awareness of the society as to the

conditions obtaining in Hazats and Houses of Detention. The principal part of this publicity should be discussion of the improved methods used in some communities in other parts of the world, the reasons for the improvements and the advantages which are likely to result

7 Increased use should be made of recognizance bonds. The use of the summons which is used in cases of quasi criminal infractions can also be extended. The freer use of the bail system is also to be commended

In connection with these palliatives of detention before trial, I should have something to say here. They have their limitations and should be critically examined now in the light of their long use in this country. The Recognizance Bonds in cases of destitutes are hardly any guarantees worth going by. Apart from that, however, the system is excellent. It fosters a sense of responsibility. The main objective is the ready availability of the accused for trial and not any financial gain to the State. The bail system, although it is more stringent than the one of the recognizance bond suffers from some disadvantages still more serious

The English law of bail has a curious history ,

The right to be bailed in certain cases is as old as the law of England itself. When justice was being crudely administered, arrest meant imprisonment without preliminary enquiry till the Sheriff held his tourn at least, and, in more heinous cases till the justices arrived. This might take months and years and it was, therefore, a matter of the utmost importance to be able to obtain a provisional release from custody. Such right is recognized in general terms by Glanville. Bracton refers to bail in many connections and generally advises that the Sheriff ought to exercise a discretion in regard to bailing accused persons, regard being paid to the importance of the charge, the character of the person, and the gravity of the evidence against him

The Sheriff was the local representative of the Crown—head of the executive in the administration of criminal justice. In that capacity he arrested and imprisoned suspected persons and if he thought proper, admitted them to bail. This discretionary power was abused, even to-day. The abuses took the form of the Sheriff and others keeping in prison persons detected of felony and letting out those who should not have been, because, as the Statute of Westminster the First

done in a vast majority of cases arising out of violation of traffic regulations. A man's liberty is as precious to him as to any other man and the utmost care should be taken to insure against unnecessary hardship being caused to anybody. Recognizance or bail with financial securities for return of wanted men should be made possible in an increasingly more number of cases. Even these two systems have got their limitations and we shall indicate them and suggest some palliatives shortly.

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The Sheriff was the local representative of the Crown—head of the executive in the administration of criminal justice. In that capacity he arrested and imprisoned suspected persons and if he thought proper, admitted them to bail. This discretionary power was abused even to-day. The abuses took the form of the Sheriff and others keeping in prison persons detected of felony and letting out those who should not have been, because, as the Statute of Westminster the First

describes, "they would gain of the one party and grieve the other." This Statute defined the procedure of granting bail with some more precision. About 12 classes of offenders were not to be bailed out—all being cases of a heinous nature. Others were to be bailed out. This Statute carried weight for several centuries. In the meantime, the Sheriff's powers had been largely transferred to the justices of the peace.

Malpractices still lingering were sought to be counteracted by subsequent statutes. Not only did the vagueness of the law itself leave a wide and ill-defined discretion in the hands of the officers but the wide powers they commanded led them often to set rules at defiance. Royal writs were then necessary requiring them to do their duty. The history of the writ of Habeas Corpus is too well-known to need a mention here.

In the light of such facts, we find in the bail system some of the blemishes still lingering

In the first place, the police and the courts have only inadequate facilities for determining where financial security is needed, how much security is needed and how adequate the security offered may be. The amount required is therefore generally determined by the charge against the defendant rather than his character and responsibility. This bears heavily on the poor and make bail practically prohibitive for them. A poor person of otherwise excellent character and responsibility charged with crime has no honest alternative to detention. On the other hand the courts continue to accept professional bondsmen of doubtful assets as sureties on bonds far in excess of their property. "The financial security is good when the defendant is sufficiently honest and responsible so that no financial security is needed and in other cases, it is practically worthless.

In the second place, the system as in actual practice and in many cases involves collusion between the police the court staff and the professional bondsmen. The Muktears and the Pleaders charge their fees to cover their risk as also for any extra that may be required for making things smooth for all concerned. The story goes that the professional bondsmen mostly Muktears here will even wait for some time and allow credit to their clients to the extent of one or two da k periods! For how else will the destitute or poor man produce money? He starts with a liability and does very often recoup his purse by cri

minal exploits to deter him from which exactly he was being hauled up! This is an extremely undesirable course which has to be remedied.

In this connection a remedy seems to suggest to me. Incidentally I have not come across anybody else suggesting it and naturally I am a bit diffident when expounding it. I should lay it to the criticism and consideration of Jurists and Criminologists so that in case it can be adapted, ever so partially, I shall feel very happy indeed.

The remedy would consist in a modified form of the system of Recognizance Bonds which should be used far more widely and which would be free from blemishes from which the system of bail suffers. The question of financial security is almost beside the point at the stage and for which it is used, the main objective in having anything at this stage is to secure the availability of the accused for trial. It is not intended that the State should profit by lapses of the nature. It is only logical then to throw the responsibility of appearing in court and answering the charge on the accused himself. It is a poor consideration that, if he has absconded, we shall be able to penalise a third man who makes his business on the principles of Insurance Companies.

I should think that any bond that is taken from the accused should not only threaten financial loss but should entail other forms of punishment as well. This will be eminently equitable, for we have, on the statute, punishment for escaping from lawful custody, actual or constructive, already. If we refer to section 225(B) of the Indian Penal Code, we shall see that it provides that a person escaping or attempting to escape from any custody in which he is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or both.

Now this section will punish even a perfectly innocent man who has been taken by the police under custody apart from the merits of the original case itself. Why not then extend this provision to cover cases in which persons are detained into custody, actual as well as constructive. By a slight modification we can cover cases of escapes from constructive custody of the police or of the magistrate and haul up the man for failure to appear when called upon or as required, apart from the merits of the case against him. This will be throwing a man directly on his own responsibility, instead of making somebody else accountable for him or making his little property satisfy the out-

raged indignation of the agents of the law

I leave it entirely to legislators to modify the section or add a new one by its side or by the side of section 174 I P C which also punishes persons legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent to issue the same, not acting up to such directions. The punishment in the added or amended section has to be made a bit more severe, because comparatively serious cases may lie against such persons.

In the event of this remedy being adopted or adapted I visualize that the whole process will be much more simplified. Where a police officer or magistrate who has to secure attendance of the accused at the right places and times, the system will automatically work in the vast majority of cases. Only in exceptionally serious cases entailing extreme punishment, the discretion will have to be fettered and persons will have to be detained in actual custody. This simple device operating a state of affairs more in consonance with refined method of treatment will come into being and people will be less scared than now in facing and answering charges. The police officer or magistrate will have very little to bother about and the grant of the provisional release from custody will be almost automatic. There will be far less people absconding than now and the financial liability incurred for nothing by the accused before they have been called upon to answer a charge will be eliminated. The financial loss incurred by a destitute criminal, which often leads to more crime, will be eliminated also. As at present obtaining the system of bail penalises financially many people who are to furnish securities while in intermediate custody but are discharged ultimately after police enquiries, the evidence having been found by the police to be insufficient.

In conclusion, I should say that the problem of under-trial detention in India with its manifold hardship, scope for corruption the trouble of people in large numbers absconding and thus depriving an investigator or enquirer of the opportunity of hearing the other side of the case, commands immediate attention. I shall be happy to see our hear jurists and legislators reviewing the position examined by me

Treatment of Undertrial Prisoners

By

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UNDERTRIAL prisoners are those who are accused persons and are awaiting trial in a court of justice. The law provides their detention in jail or lock-up as they may escape a trial and consequent punishment if awarded at the end of the trial. But it has to be remembered that such persons are by no means necessarily guilty and it is a well known fact that in the United Provinces about 40 per cent of the accused who are brought to trial are in the end acquitted, discharged or released under Section 169 of the Criminal Procedure Code.

It has therefore to be admitted that a large percentage of persons who form this population of undertrials are really innocent. The consideration of this problem, therefore, assumes considerable importance. If an innocent person were to be subjected to any hardship for a minute it would be bad enough and no civilised country would tolerate it but we cannot lose sight of facts that trials in India are sometimes very prolonged and cases are not wanting where undertrials have been ordered to be released from jail as innocent after enquiry, trial and appeal lasting for periods from two to three years. Farrukhabad Session's trial *King-Emperor v. Chabi* and others decided on the 9th May, 1930, is an illustration of this fact. In this trial there were 42 accused and the enquiry took several months and so did the Sessions Trial and several accused in this trial were acquitted by the Hon'ble High Court after a period of detention of more than 2 years. Again in another trial a respectable Thakur Sanker Singh was arrested on 28th October, 1935 and was acquitted by the Sessions Judge after an enquiry and trial on the 20th August, 1936, i.e. after 9 months 22 days. Such trials are by no means very uncommon, and therefore a proper consideration of the question has great importance, value and utility.

The treatment today meted out to the undertrials very nearly re-

Is the Juvenile Court A Criminal Court ?

By

DR. CLIFFORD MANSHARDT

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UNTIL relatively recent times the treatment of the child offender was influenced by prevailing theories of adult criminology, and was punitive in nature. Thus as late as 1844, there were in the prisons of England, 11,348 persons between the ages of 10 and 20—or 1 in 304 of the total population of that age. In 1849 no less than 10,703 persons under 17 were sentenced to imprisonment or transportation.

A hundred years ago, every English child who came into the hands of law, underwent the regulation procedure of trial by jury, involving detention in ordinary prisons while awaiting trial. The evils in the situation were so apparent that a Royal Commission was appointed in 1836 to consider whether it was advisable to make any distinction in the mode of trial between adult and juvenile offenders, and if not, whether any class of offenders could be made subject to a more summary proceeding than trial by jury. The Commission advised against any distinction in the mode of trial, save by increasing the summary jurisdiction of magistrates.

A Select Committee of the House of Lords, which reported in 1847, recommended an increase of summary jurisdiction for juvenile offenders, and an Act of the same year empowered justices to try children under 14 for simple larceny.

The Summary Jurisdiction Act of 1879 gave still wider jurisdiction to justices, and the procedure then laid down is still followed.

A distinct forward step was taken in 1908. Although the majority of children were no longer still tried with the same formality as adults, they were tried in the same courts. The Children Act, 1908, did away with this procedure and established the Juvenile Court to deal with persons under 16. The Juvenile Court was still a court of summary jurisdiction, but it was required to sit in a different place, or at a different time from the ordinary sittings of the court.

The Juvenile Courts (Metropolis) Act of 1920 introduced a new principle in that magistrates for the juvenile courts were to be specially selected.

The existing law on the subject of juvenile courts was laid down in Section 111 of the Children Act, 1908 and in the Juvenile Courts (Metropolis) Act, 1920. The main requirement is that a "court of summary jurisdiction when hearing charges against children or young persons or when hearing applications for orders or licenses relating to a child or young persons or when hearing applications for orders or licenses relating to a child or young person at which the attendance of the child or young person is required shall unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held."

In 1925 a Committee was appointed to inquire into the treatment of young offenders and to report what changes, if any should be made in the existing law or its administration. In the course of its duties the Committee examined the question whether the trial of young persons for offences should be entirely separated from criminal jurisdiction as in the United States. The Committee decided against the American procedure, stating that they could suggest no better method for dealing with delinquent children than a trial based on the well tried principles of English law. The gravity of the offence should be brought home to the offender and no steps should be taken which would weaken the respect for law among the members of the younger generation.

The opinion of the Committee evidently received official acceptance, for the Children and Young Persons Act, 1933—a Consolidation Act embodying most of the provisions of the Children Act 1908 the Children and Young Persons Act 1932, and certain other statutes, designates juvenile courts as petty sessional courts, or courts of summary jurisdiction. In other words, the English juvenile court has never been divorced from its criminal court antecedents though like an ordinary police court, it combines both civil and criminal functions.

The Juvenile Courts operating in India have been set up on the English model. In the province of Bombay children's cases in the

most areas are heard by the District Magistrates, sub-divisional magistrates, or by magistrates of the first class. In the city of Bombay, where a special juvenile court has been constituted, the court is presided over by a salaried Presidency Magistrate.

The result is confusion. The juvenile court is essentially a criminal court, but at the same time it seeks to recognize the principle of guardianship. One court, presided over by a magistrate with a legalistic outlook, regards the child offender as a young criminal. Save for the fact that the proceedings are somewhat less formal than in the adult court, the procedure is very little different. A second court, presided over by a magistrate with a more humanitarian outlook, regards the juvenile offender as a child in need of adult help. The dual conception, which is inherent in the court, allows the magistrate on the bench to emphasize whichever element is most congenial to his own way of thinking. And until magistrates as a class have a more thorough knowledge of the philosophy underlying the juvenile court, the criminal emphasis is bound to predominate.

In my opinion, we in India should re-examine the process for which the juvenile court was originally founded. The whole philosophy behind the juvenile court movement, as it was originally developed in America, was that of guardianship—that is, the State assumed functions on behalf of the child which its parents were either unwilling or unable to assume. The first juvenile court law, the Illinois Law of July, 1899, states, "If the offender is *young* the object of court procedure is not to discover whether he has committed a specific offence, but to determine if he is in such a condition that he has lost or never known the fundamental rights of childhood to parental shelter, guidance and control."

Criminal law, on the other hand, rests upon the proposition that to vindicate society and the law, the accused must be punished. "The many social factors which are involved in the anti-social act are excluded from the trial as being irrelevant. In trying children under criminal juvenile court laws, it is true that many of the rigid rules governing the trials of accused adults have been modified so as to permit an inquiry into the social circumstances that may aid the court. The principles, however, underlying these children's courts are essentially the same as the principles underlying the criminal courts generally. The child has offended against the law, he is charged with a

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into our legal procedure. "Emphasis is laid, not on the act done by the child, but on the social facts and circumstances that are really the inducing causes of the child's appearance in court. The particular offence which was the immediate and proximate cause of the proceedings is considered only as one of the many other factors surrounding the child. The purpose of the proceedings is not punishment but correction of conditions, care and protection of the child and prevention of a recurrence through the constructive work of the court. Conservation of the child as a valuable asset of the community is the dominant note." (*Flexner and Baldwin*)

Since the aim of the juvenile court, as expressed above, is not punishment, but an attempt to understand, and correct those conditions which have led to the delinquency the treatment of delinquency is a co-operative effort on the part of magistrates, doctors, social workers, educators and psychologists. The work of the juvenile court is the work of case work in general—the adjustment of the individual to society. This concept of juvenile court is not the statement of an impracticable ideal. It has the validity of experience behind it.

At the present time in India three provinces are operating Children's Acts. Other provinces will undoubtedly introduce such legislation in the near future. When the whole atmosphere of the nation is charged with progress, it will be a tragic mistake if we continue to pattern the treatment of our delinquent children after an outmoded way of procedure. If this Conference puts its seal to no other proposal let it speak with a clear voice on this one subject "The delinquent child is *not* a young criminal. He is society's ward."

Preventive Work under the Bombay Children Act

By

Miss M K DAVIS, B A (Lond), M B E., Inspector of Certified Schools, Government of Bombay.

‘EVERY persistent offender has been at one time a first offender and in a review of the methods of dealing with persistent offenders account must be taken of the methods of dealing with these persons before their persistence in crime has been developed the way in which an offender is treated on his first appearance in court on a criminal charge is likely to have a momentous effect for good or for evil on his subsequent career’ (Report on Persistent Offenders 1932) Goring in his study on the English Convict reports the result of examining the records of 2,204 habitual offenders and states that 14% were under 15 years of age at the time of their first conviction and 39% were aged between 15 and 20 Statistics for indictable offences in England in 1935 show that 39% of the total crime was committed by lads aged up to 17 years Sound preventive work for the reduction of adult crime can, however, be effected by legislation like the Bombay Children Act which provides not only for the right treatment of young delinquents under 16 years of age but also for the prevention of juvenile delinquency through the protection of neglected children.

The Bombay Children Act is modelled on the English Act The principles underlying the prevention and right treatment of juvenile delinquency in East and West are identical Methods, however, must vary to some extent and ratio results must differ owing to marked difference in social background Part IV of the Bombay Children Act, dealing with young offenders is in force throughout the Province. Parts II and III, dealing with neglected and victimised children are only in force in 10 selected areas The volume of preventive work possible under this Act is immense The output, however, is, at present, much handicapped by limited application, by defects in the actual enactment and by weakness of administration

The age group of children covered by the Bombay Children Act

case is concluded in the Juvenile Court and, therefore, serve as an alternative to police detention. As Part IV of the Children Act is in force throughout this Province and as remand arrangements have only been made to serve ten areas, great difficulty still occurs in the case of destitute young offenders. From inquiries made in some mofussil places it appears that most cases are dealt with in a very summary way without taking any remand but that in a few cases boys are still being remanded to the ordinary sub jails. Until proper remand arrangements are available in all districts little good, if any will accrue from putting Part IV of the Act into operation throughout the Province. A remand home is also a useful place of observation. Until full inquiries have been made and the child's physical and mental condition examined and his general conduct observed, it is not possible to deal with his case constructively.

Under the Bombay Children Act arrangements are made to constitute special Juvenile Courts for the hearing of children's cases. The usual practice is for such courts to be held, wherever possible in the remand home instead of in the ordinary court building. In Bombay City a stipendiary Presidency Magistrate and one honorary lady magistrate, chosen monthly from a roster constitute the bench. In the mofussil a first class stipendiary magistrate sits in association with either one or two honorary lady magistrates. The function of a Juvenile Court is to carry out the main purpose of the Children Act by meeting the need of each and every child placed before it. Treatment and not punishment is the key word. The proper atmosphere should be something approaching that of a moral clinic. Many difficulties exist, however in securing the proper functioning of Juvenile Court in this Province. Some stipendiary magistrates concentrate too much on the offence and the letter of the law. First class magistrates in the mofussil have to record too much evidence and procedure becomes complicated. It is difficult to see whether a solution will be found either by the appointment of special stipendiary regional itinerary Juvenile Court Magistrates or of special honorary magistrates as in England. The Juvenile Court is the main pivot on which the Children Act works and everything depends upon the personality and outlook of the Magistrates. Another handicap to the proper administration of Juvenile Courts in this Province lies in the complete lack of any facilities for psychological treatment save in Bombay City. This means that Juvenile Court work remains largely surface work and root

causes underlying delinquent conduct remain undetected

At present there are 16 Certified Schools in the Bombay Province. These serve the same purpose as reformatory schools and provide for residential training. The Children Act allows for two kinds of Certified Schools—Government run or under voluntary management. Only two of these institutions are run by Government and the remainder are voluntary homes aided by Government grants. The function of these institutions is to supply moral, educational and industrial training. Section 30 of the Children Act provides for a system of release on licence, whereby later rehabilitation is helped forward both by the imposition of a period of conditioned liberty and also through the wise guidance of a Probation Officer. The standard of institutional work is not yet satisfactory owing to various factors. It is still extremely difficult to recruit the right type of staff, no special school has yet been established for mentally defective children,—who have, occasionally to be committed to ordinary Certified Schools. None of the present voluntary institutions are properly equipped to deal with the most difficult type of girl, and the standard of life inside these schools fails to approximate to hard outside reality. It is not yet possible to assess the value of the preventive work carried out through Certified Schools in this Province. In England it is usual to follow up each child's after-career for three years after leaving school and it is stated that in 75% of cases the result is satisfactory. In India children are discharged to their homes at great distance and machinery has not yet been devised for their supervision beyond the limit of their licence period. During 1938, 147 ex-Certified School children were under licence supervision and the known rate of failure within the licence period worked out at only 15.6%.

The methods of treatment allowed under the Bombay Children Act are generally on constructive lines. Juvenile Courts are widely empowered under the Act and sometimes lack discrimination in selection of their orders. This is seen particularly in the large number of children (42.3% in 1938) who were restored, released on admonition, discharged and bound over without the imposition of supervision by a Probation Officer. It is doubtful whether any real preventive work was done in the passage of orders, whereby so many children were simply returned to those very conditions which were responsible for their appearance before the court. The attention of a Juvenile Court

ren. To guard against other types of children unspecified in the Act but requiring protection, it would be better to replace this section by a wider omnibus clause as in the English Children and Young Persons Act of 1933 covering all children in need of protection.

Although certain defects exist within the framework of the Children Act, more potent ones at present exist in the actual administration. In 1934 the Bombay Government established the Juvenile Branch under the Backward Class Officer as Chief Inspector of Certified Schools to secure coordination of work and centralised control. Much, however still remains to be done to effect this and longer experience is required for any radical improvement. The policy of Government is to encourage the gradual application of the whole act throughout the different districts of the Province by subsidising local district organizations. A federal organization the Bombay Probation and After Care Association is already in existence, of which the Backward Class Officer who is also Chief Inspector within the meaning of the Children Act, is Secretary. To this central body district organisations are federated and it is on them that responsibility rests to provide local remand arrangements and to employ paid Probation Officers, through whose inquiry work it will be possible for Juvenile Courts to function. Owing to the almost complete lack of educated public opinion regarding Children Act work in mofussil areas it is extremely difficult to get the Act fully and properly applied. At the present time, it is only in five districts that these local organizations are doing any practical work and even where the whole act is applied, there is a shortage of trained workers for appointment as Probation Officers and no means for their day to day guidance. Until official steps have been taken to educate public opinion on the social significance of work under the Children Act in mofussil areas, it will not be possible either to extend the operation of the Act or to raise the standard of work now on hand.

In conclusion it has to be admitted that the Children Act gives ample scope despite certain inherent defects both within its provisions and its administration for preventive work amongst children. It has, however to be pointed out that, as stated in the First Juvenile Branch Administration Report of 1938 "The problem of the prevention and right treatment of juvenile delinquency cannot be solved by the application merely of one legislative measure. The roots of the

problem strike deep into social and economic conditions and cannot be extirpated without widespread social reform. Under the Children Act many types of children claim protection—neglected, uncontrollable, victimised and delinquent, many types of institutions exist to serve their need—remand homes, Certified Schools and private orphanages, and many types of workers collaborate in their social reclamation magistrates, teachers and Probation Officers. The Children Act, thus, presents a wide field of cooperative work of national importance. Root causes will, however, only be removed given an active campaign of social reform, whereby adequate preventive work can alone be secured.

The Criminal Personality in the Light of Certain Psychological Tests

By

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DELINQUENCY as a well-defined scientific problem has interested the psychologist for several decades. A large mass of data has been collected in this field, and it still awaits analysis, collation and theoretic formulation. The psychologist of the present century has been, in these respects, more careful than his predecessors of the past. He has not attempted to solve the whole problem of crime at one fell sweep of a general theory in regard to the criminal type or criminal mentality. The problem of delinquency has very largely been one of research for him. The psychologist has in the past attempted to approach the problem of criminal mind through the technic of his science, leaving the administrator to estimate the possibility of application and the theoretic import of the conclusions. He has studied the criminal as a biological specimen rather than as a personality in the social setting.

A new outlook, however, seems to be developing during the last few years. The Psychologist has been directing his studies to the analysis of the total configuration of the personality of the delinquent. He no longer seeks the mythic criminal motive which like a drop of acid in the milk, alters the nature of the whole personality. His studies, for this reason have tended to become more concrete.

On the other side, the problem set to the psychologist by the administrator has itself become more specific. The psychologist is not required to discover the open sesame of delinquency. He is asked if an offender has normal or sub-normal intelligence, whether his life of emotion would run an even course, whether he possesses skill and enough of self-confidence to take up a vocation, whether his aims and purposes are steady enough for him to regain a social status.

The task of the psychologist, then, is not a romantic search after

the mysteries of a lost soul. It consists rather of the prosaic business of testing with the help of laboratory appliances or otherwise the reactions of the delinquent, to calculate the significance of their quantitative value, to work out correlations and finally sometimes to come to conclusions with much ado which any one might hazard from one's ordinary experience. Yet, this elaborate procedure is not merely a perverse academic method of making simple things difficult. The conclusions of the psychologist have their basis in the concrete events of the life of the criminal. Although the implications of the propositions may be less general than they claim to be, yet, when we deal with these generalisations we are in direct touch with concrete facts of human situations.

Each case is thus studied under the following heads

1. Complaint
2. Previous record
3. Explanation offered by the delinquent
4. Motives suggested by the family situation
5. Attitude towards the offence
6. Family history
7. Mother
8. Father
9. Brothers and Sisters
10. Record of the delinquent's life: (a) Education (b) Religious training (c) Moral training (d) Home conditions (e) Neighbourhood (f) Friends (g) Habits (h) Employment.
11. Physical Conditions
12. Mental conditions revealed by psychiatric examination
13. Mental condition revealed by psychological examination
14. Problem to be solved in the light of these facts
15. Personality the credit and debit side
16. Recommendation.

In each case the psychologist and the psychiatrist must contribute their quota which would provide the administrator concerned with the problem, the information necessary for the solution of the personal problem of particular cases.

II.

THE PROBLEM OF INTELLIGENCE OF THE DELINQUENT

It was supposed by the earlier workers in the field that the delinquent exhibits some defect or peculiarity of intelligence. The following table will show that the I Q. of the delinquent may range from the lower Intelligence values to very superior Intelligence values.

TABLE I.
I Q AND DELINQUENCY

			Ch A	M A
A	I Q	135	16	21
B	I Q	90	14	13.2
C	I Q	115	9	10
D	I Q	79	10.6	8.4
E	I.R	99	14.9	14.8

In view of this fact it is held by Sutherland that feeble-mindedness as a cause of crime has been unduly stressed. A study of the first offenders and of those who lapse into crime shows that intelligence does not measure the possibility of their growing straight. The following table will indicate the fact.

TABLE II
INTELLIGENCE & ADJUSTMENT

	% of Av I Q	To of Defective I Q (1)
who are habitual criminals	66	70
who fail	35	39

In fact, intelligence of the delinquent is an instrument that can be used for rehabilitation and better adjustment. It is not a factor that necessarily explains criminality.

III

THE FACTOR OF INTELLIGENCE AS REVEALED IN THE EDUCATIONAL STATUS:

There is often an attempt at correlating criminality with illiteracy. And the latter, again, is said to be an indication of some defect in intelligence. An analysis of 93 cases of delinquency will show that such correlation is not possible, at least in a country in which free elementary and sometimes higher education is provided for all.

TABLE III.

EDUCATION AND PRISON POPULATION:

Scanty Education	11
Common school from 2 to 10 years	7
Grammar School from the 3rd to the final grade	52
High School, Business Education and Higher Education	23
Total	93

This table shows that the criminal usually has the amount of education which the common run of citizens is expected to possess. (2)

IV

OTHER PERSONALITY PROCESSES THAT BEAR UPON
DELINQUENCY:

PERSONALITY TYPE

Burgess recommends the study of the general personality type and personality attitudes in the context of the problem of delinquency. The delinquent behaviour is elicited by the appeal of the social and situational stimuli to the traits, overt and incipient, constituting the personality. Hence, the attention of the psychologist should be, it is suggested, drawn to these traits. Affirmative or negative information, and if possible, a quantitative valuation should be obtained of the following features:

1. How far does behaviour indicate objectivity of attitude?

This question can be answered by an observation of the delinquent on the following points:

- i. Is he of equable temperament?
- ii. Is he enthusiastic in his disposition?
- iii. Is he direct in approaching a point or purpose?
- iv. Is he aggressive?
- v. Is he explosive?

2. How far is the individual an Introvert?

- i. Is he imaginative?
- ii. Is he secretive?
- iii. Is he sensitive?
- iv. Is he inhibited?

3. How far is the individual psychopathic?

- i Is he Eccentric?
- ii Is he Egocentric?
- iii Is he Emotionally unstable?
- iv Is he mentally subnormal?

An estimate of the personality in these terms may, it is said, help both in diagnosis and prognosis (3)

V

DISPOSITIONAL AND EMOTIONAL TRAITS AS DETERMINANTS OF DELINQUENCY:

(1) Attempts have been made to correlate dispositions, interests with the grades of delinquency. The method pursued has been to apply various types of tests to the delinquents on a large scale. The conclusions are reached through a statistical analysis of the data. Durea formulates the following conclusions on the basis of his study:

- (a) The least delinquent subjects exhibit a heightened sensitiveness to wrongs
- (b) The higher degree of delinquency is marked in a large number of cases with an exaggeration of fear and anxiety states.
- (c) The higher degree of delinquency is associated with interests that are likely to disrupt groups, large and small
- (d) The lesser degrees of delinquency are associated with a tendency on the part of the delinquent to admire certain person-

ality trends that are subjects of social and legal disapprobation. Durea suggests that the scores of these tests, within a certain range of values, may be employed for prognostic purposes. It is not stated, however, whether any reliable prognosis has been made by this method (4)

(ii) A comparison has likewise been attempted by similar test methods between the first offenders and habitual delinquents' or, **Repeaters.**

TABLE III.

EDUCATION AND PRISON POPULATION:

Scanty Education	11
Common school from 2 to 10 years	7
Grammar School from the 3rd to the final grade	52
High School, Business Education and Higher Education	23
Total	93

This table shows that the criminal usually has the amount of education which the common run of citizens is expected to possess. (2)

IV

OTHER PERSONALITY PROCESSES THAT BEAR UPON
DELINQUENCY:

PERSONALITY TYPE.

Burgess recommends the study of the general personality type and personality attitudes in the context of the problem of delinquency. The delinquent behaviour is elicited by the appeal of the social and situational stimuli to the traits, overt and incipient, constituting the personality. Hence, the attention of the psychologist should be, it is suggested, drawn to these traits. Affirmative or negative information, and if possible, a quantitative valuation should be obtained of the following features:

1. How far does behaviour indicate objectivity of attitude?

This question can be answered by an observation of the delinquent on the following points:

- i. Is he of equable temperament?
- ii. Is he enthusiastic in his disposition?
- iii. Is he direct in approaching a point or purpose?
- iv. Is he aggressive?
- v. Is he explosive?

2. How far is the individual an Introvert?

- i. Is he imaginative?
- ii. Is he secretive?
- iii. Is he sensitive?
- iv. Is he inhibited?

3 How far is the individual psychopathic?

- i. Is he Eccentric?
- ii Is he Egocentric?
- iii. Is he Emotionally unstable?
- iv Is he mentally subnormal?

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TABLE IV

COMPARISON BETWEEN REPEATERS AND GOOD PROBATIONERS ON THE BASIS OF A SET OF 15 ITEMS:

Item	Violators		Good Probationers.	
	N	Mean	N	Mean
1 Dissatisfaction with community	22		10	
2. Dissatisfaction with work	28		19	
3 Social Behaviour avoiding groups	34		29	
4 Social Behaviour avoiding individuals	18		15	
5 Political insurgency	32		22	
6. Social preferences desire for solitude	20		12	
7 Social grievance	26		14	
8 Antagonism toward authority	29		21	
9. Reserve with father	35		41	
10. Antagonism toward father	28		31	
11 Reserve with mother	32		34	
12. Antagonism toward mother	19		22	
13. Dissatisfaction with marriage	23		24	
14 Antagonism toward children			06	
15 Lack of integration with ideal	21		18	

The table clearly indicates that the Repeaters entertain a feeling of grievance. This may pertain to the society or to the members of his family (5)

(ii) A comparative study of normal population, juvenile delinquents and adult criminals:

A set of tests and method of computation analogous to those discussed above have been employed for the purpose of comparison between the normal population, represented by those who have passed out of High Schools and Colleges juvenile delinquents in the Industrial Schools and Reformatories, and the inmates of penitentiaries. It is obvious that scores of the general population will be regarded as

the standard in terms of which the others will be evaluated and graded. The following traits were explored by the tests

Emotional stability, Extraversion, Self-confidence, Dominance, Self-sufficiency, Sociability. The following are the conclusions put forward by Horsch and Davis on the basis of their observation

- (a) The inmates of the penitentiary, that is to say the adult criminals, exhibit a higher degree of self-sufficiency but a lower score on all the other counts
- (b) There is a greater frequency of introversion and a higher degree of emotional instability in the population of the penitentiary. This is accounted for by the authors as consequences of the stresses of jail life,
- (c) The reformatory and the Industrial school population approach the normal population to a much greater extent than the Penitentiary population. The following table is based on the data of Horsch and Davis (6)

TABLE V

THE DIFFERENCE IN MEAN RAW SCORE.

(+ means greater amount and — means less amount of the trait in comparison to the normal population, represented by the High School and College population)

Trait	Industrial		
	School	Reformatory	Penitentiary
Emotional Stability	—32 1	+ 4 8	—18 5
Extroversion	—17 8	+13	— 8 1
Self-confidence	—14 1	— 9 3	—22 4
Dominance	—11 2	+ 3 3	—10 5
Self-sufficiency	+ 2 4	+ 6 4	+22 1
Sociability	— 5 8	— 8 1	—45 3

The data presented above suggest the following generalisations

- (1) The reformatory inmates show a better record of the traits tested than their more favoured brethren among the normal popula-

tion. The deficiency in the two traits, self-confidence and sociability may be an outcome of a limited and fixed institutional life.

(ii) The Industrial School population shows a definite deficiency in certain traits but not such as cannot be made up.

(iii) The Jail population exhibit a deficiency in all the traits save one, that of self-sufficiency. This may be due to a recoil. The life of crafty adventure ends in defeat that reflects itself upon the whole personality. There is consequently a general diminution in the value of the traits along with the subsidence in the sense of power.

(iv) The most interesting fact revealed in the table is that the normal population possesses a lesser degree of self-sufficiency. This is due to the fact that institutional life implicates mutual dependence. Man in his daily life has to depend on others in the usual course of things. The delinquent has, however to cut himself adrift from the social ties. He needs all the self-sufficiency that he can command. The trait, then, develops by necessity and by practice.

VI.

CERTAIN BASIC CONCEPTIONS IN THE PSYCHOLOGY OF THE CRIMINAL PERSONALITY:

(i) The foregoing data suggest that delinquency has its roots largely in the emotional conflicts mainly in the setting of the family. This opens the way to a psycho-analytic approach to the theory of crime. But while it may be possible to understand the mechanism of delinquency in this manner the process of rehabilitation must take place in the light of the social and economic possibilities. Hence there will always be a gap between what the theory suggests and what can actually be achieved.

Again, a truly scientific understanding of the motives of the crime implies a co-operation between the criminal and the psychologist. It is very uncertain how far that may be forthcoming. And lastly the length of time needed for a complete analytical treatment of the criminal is an obstacle which cannot easily be circumvented.

(ii) The emotional tension which is said to underlie delinquency has its foundation in the hereditary make up of the individuals as well as in the social circumstances that elicit a delinquency-response.

It is of no great advantage to enter into the question whether criminality is the consequence of heredity or of the environment, social, economic and physical

The attitudes, dispositions and tensions that underlie delinquency are not sudden growths. They take shape through the accumulation of small stresses of daily life that an unduly sensitive system receives and allows to persist. As Clifford Shaw says delinquency represents "a process of summation, which has its origin in the process of interaction between the individual and the situation to which he is responsive. Viewed from this standpoint a delinquent act, is a part of a dynamic life process, which can be understood in relation to the sequence of experience"(7). It is a theory magnificent in its comprehensiveness. Its application for ameliorative purposes, however, can only be indirect. For, no single fact can be the basis of action.

(iii) Distinguished from these larger sweep of theories, there is another programme and outlook. It has its basis in experimentation and tests. It does not propose to weave the data into systems but to take them at their face value. Each undesirable trait revealed by test and experiment challenges the psychologist to devise situations for its modification. The task of the psychologist, then, is to probe into the personality of a very large number of delinquents, to carry on his researches year after year in order to establish correlations between specific traits and delinquent trends. When the psychologist feels sure that he knows the mental and the behaviour symptoms of delinquency, he is called upon to devise situations for their modification. Psychology, then, must decipher and analyse significant traits. He must treat them piecemeal. His is a slow work but it has the virtue of adopting the only certain method known to man, the method of trial and error.

VII

CONCLUSION.

Each delinquent is a two-fold loss to the state. He is withdrawn from field and factory, from the army and the defence services, social life, and in this manner ceases to be a productive unit. He is in addition a charge on the state for his maintenance and security. The problem of treatment of delinquency is, then, a problem of social economy.

(i) The psychologist can make important contributions to this programme of personality-reclamation. He can discover by laboratory tests and by his skilled technic of observation the phases of the personality that will best yield to social and economic manipulation. In this manner he can give valuable data for the practical criminologist to utilise to the best advantage of the delinquent.

(ii) He can also measure the degree of change that occurs in the personality under specified conditions. In this manner psychology can help the administrator to estimate the value that an individual is deriving from an industrial school, reformatory or a scheme of probation. Such measurement would avoid much waste of time which may make or mar the life of the delinquent.

(iii) He can to a large extent be of help to the judiciary in the award of the punishment which would really be of help to the delinquent. Tests and observation would supply the material which the psychologist may summarise in a report for the magistrate to consider.

(iv) All of these measures presuppose a scheme for the psychological study of the delinquent on an extensive scale. Men experienced in the laboratory technic should regularly carry on a complete psychological examination as a matter of routine. The magistrates should be empowered to order such examination in certain categories of cases and in all cases of juvenile delinquency. These data accumulated from year to year will constitute a sound basis for diagnosis and prognosis and for measures of economic and social rehabilitation.

(v) It is not necessary for the government to invest large sums on a new department for such investigations. There are several universities in this province carrying on advanced work in Psychology and also to be found on the staff. A reasonable grant to these Universities for the carrying on the suggested line of work would be enough for a modest beginning. If after a period of say seven years, the scheme does not seem to bear fruit it may be replaced by a more suitable one. A beginning however ought to be made immediately. It is long overdue.

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of Prison and Prisoners (London, 1618) and Brays Essay Towards the Reformation of Newgate and other Prisons in and about London (1702). The second work was a report based on the visit of prisons conducted under the auspices of the Society for the Promotion of Christian Knowledge. But it was not before 1773 that the British Parliament authorised magistrates to appoint chaplains in jails. This is the first official recognition of the need for prison reform in England.

In the meantime was published in 1764 *Des Delitti e delle Pene* (Crimes and Punishments) by Beccaria (1735-94) the Italian philosopher and humanist, who has been described a century and a quarter later by the French criminologist, Gabriel Tarde, in *La Philosophie Penale* (1890) as a "child of our eighteenth century".

Beccaria's work is by all means the first philosophical and systematic work of modern times and he is the Rousseau, Adam Smith or Herder of criminology. In his analysis man is postulated to be a free agent and is said to commit crime after calculation of pleasure and pain. Punishment therefore ought to be graduated according to the crime committed. But it must not vary according to age, health, economic or other conditions.

Perhaps the most objective and fraught with practical consequences was the treatise of Howard (1726-86) entitled *The State of Prisons in England and Wales* (London, 1777). It contained also an account of some foreign prisons and hospitals. It is this work to which the prison reform propaganda of today has to look up as the first effective document. Howard is likewise to be remembered in connection with the doctrine that reformation, not punishment is the objective of criminal justice. The conception of the house of confinement or prison as "penitentiary" is also Howardian.

During the early nineteenth century reform movements were going on and by 1825 the first Juvenile Reformatory was established at New York. American prison methods were being talked of in Europe, and in 1835 commissions of inquiry were deputed to the U.S. from England, France, Prussia and Belgium. The Pennsylvania system (i.e. cellular treatment) which involves the complete isolation of prisoners, attracted the attention of the European experts and was adopted with modifications in their countries.

It was in the midst of this prison reform *milieu* in Eur America

that the first Prison Committee was instituted in India (1836-38) The atmosphere was thus adapted to the views of the German criminologist, Karl Roeder (1806-79), according to whom the object of punishment is reform and education.

Prison reform propaganda assumed world-wide proportions by the middle of the nineteenth century The first International Prison Reform Congress was held in 1846 at Frankfurt in Germany and the fourth at London in 1872 India had her second Prison Committee in 1864 In the meantime the U S A which had taken the lead in the establishment of Juvenile Reformatories in 1825 again adopted a pioneering measure in 1867 by introducing the "indeterminate sentence" (regarding prostitutes) in Michigan The establishment of the State Reformatory at Elmira (New York) in 1875 constitutes an important landmark in the cumulative prison reform movement of the century since Beccaria and Howard

The challenge to this reform-cult and humanitarianism of "classical" criminology came from Italy in the researches of Lombroso as published in *L'Uomo Delinquente* (The Criminal Man, 1876-78) and his colleagues, Ferri (*La Sociologia Criminale*, 1881-84) and Garofalo (*La Criminologia*, 1885) The classical school was condemned by them as romantic, metaphysical and ultra-optimistic They established what is called the "positive" school According to Lombroso and his group the individual cannot be treated as a free agent The crime is committed by man because of physical, physiological, racial and other innate causes over which he has no control The fear of punishment can hardly have any effect on the criminal propensities of the human nature The value of education to a criminal is nil and can but render him a "recidivist" (habitual offender) Lombroso in his attitudes to the Beccaria-Howard complex appears almost as a Malthus *vis-a-vis* Godwin in regard to the problems of the individual *vs* political justice The criminal is according to him an inevitable character, a morphologically predetermined type He is "born", not made*

Lombroso is essentially a criminologist But some penal methods, especially those which are associated with the liberalism of contem-

* B K Sarkar *Political Philosophies since 1905*, Vol. I, (Madras, 1928), F Von Rohden "Lombroso's Bedeutung fuer die modern Kriminalbiologie" in the *Archiv fuer Psychiatrie* (1930), H Mannheim "Lombroso and Modern Criminology" in the *Sociological Review* (London), January 1936

which types of men and women are improvable or reformable. The problem has risen in Germany because in 1921 the "progressive grade system" was introduced by Bavaria in the treatment of prisoners.*

The biological bias of Nazi criminology is declared by Mezger in his *Kriminalpolitik auf kriminologischer Grundlage* (Crime policy of Criminological Foundation, Stuttgart, 1934) as follows: "Eine extreme Milieutheorie ist in ihrem kriminal-politischen Konsequenzen fuer den totalen Staat unannehmbar" (An extreme environmental or sociological theory is in its crime-policy unacceptable to the total state) In keeping with this idea is the individualistic responsibility maintained by Sauer when he writes in his paper on "Anlage und Umwelt als Verbrechensursachen" (Heredity and Environment as Causes of Crime) that it is the individual himself that is the cause of crime. It is in the striving of the individuals will that the cause is to be sought (*Zeitschrift der Akademie fuer Deutsches Recht*, Berlin August, 1935)

At the International Congress of Population (Berlin, 1935) Ristow** in his paper entitled *Bevoelkerungspolitik und Kriminalbiologie* (Population Policy and Criminal Biology) justifies the Nazi race-law (1933-34) to the effect that diseased heredity is to be prevented in the rising generation (*Gesetz zur Verhuetung erbkranken Nachwuchses*) because this serves to reduce criminality. The close relation between diseased heredity and criminality is accepted by him on the foundation of Ruedin's researches as published in the *Mitteilungen der Kriminal biologischen Gesellschaft* (1931). The Ausbrennen (cauterization) of diseased parts out of the hereditary flow of a race is declared by him to be an act of justice. Eugenic measures and sterilisation (which of course is eugenic) naturally belong to this system of race law.

Because of the importance attached to the non-biological or extra biological factors in the actiology of crime the crimino-biological school of Germany can be described as neo-Lombrosian or neo-positive. Contemporary criminological researches in Italy ought to be treated perhaps as more Lombrosian than neo-Lombrosian, because, with them, although psychological and sociological elements are referred to, the biological obsession is much too evident.

* A Cantor "Recent Tendencies in Criminological Research in Germany" in the *American sociological Review* June, 1936.

** *Bevoelkerungsfrage* edited by Harmsen and Lohse (Munich, 1936) pp. 649-650. See also Kuttke's paper on *Das deutsche Gesetz zur Verhuetung erbkranken Nachwuchses* "Ibid" pp. 676-685.

Pande's *Trattato Sintetico di Patologia e Clinica Medica* (Synthetic Treatise of Pathology and Medical Clinic, Messina, 1927) gives the present-day version of the Lombrosian "born-criminal" This type has certain morphological, physiological, and psychological characteristics and these are determined by heredity as well as by the environment acting on the heredity There arises thus the "constitutional criminal" This kind of individuals is often called the "real" criminal as distinguished from the "occasional" criminal The leading criminologists of contemporary Italy are interested in this constitutional criminal and their chief exponent, Ottolenghi, is out and out Lombrosian In his *Trattato di Polizia Scientifica* (Treatise of Scientific Police, Rome, 1932) the "real criminal" is defined to be an individual distinct and separate from the rest of humanity This type of offenders is considered to be the creation of negative biological and social selection

To the same school belongs Di Tullio in whose *Manuale di Antropologia e Psicologia Criminale* (Rome, 1931) every "real" or constitutional delinquent is described as being burdened with defective or degenerate heredity The morpho-physico-psychological abnormalities or anomalies derived from diseased heredity form the basis of the delinquent constitution, and it is this constitution that predisposes the individual towards criminality According to Di Tullio factors leading to defective heredity may be curbed or eliminated by eugenic marriages and by mental hygiene programmes It is the function of criminology, first, to correct the constitutional anomalies, and secondly, to offer the individual an appropriate environment The Italian Lombrosians (or neo-Lombrosians?) of today are therefore not as pessimistic as Lombroso Indeed, the Fascist Penal Code of 1931 owes many liberal features to the "constitutional criminologists"

The Fascist Penal Code of 1931 has among other things introduced a sharp distinction between "occasional" criminals and three special types of criminals, namely, the habitual, the professional, and those "by tendency" The last are the "born criminals" of Lombroso or the "constitutional" criminals of Pende-Ottolenghi-Di Tulli These three types are recognized in the Code as the most dangerous to society After serving their usual sentences they are therefore subjected to *misure di sicurezza* (measures of security) and surveillance If necessary, they may be placed in detentive institutions

In this connection it is worth while to observe that the American publication, *The Individual Criminal* (Washington 1935) by Karpman, emphasizes psychic factors in criminality "Whatever significance one may attach to social or mass causes," says he, "there can hardly be any doubt that the picture will never be complete without a particular study of the individual criminal as a determined factor in the situation." On the other hand, the milieu or the social environment has been stressed in another American work, *Social Determinants in Juvenile Delinquency* by Sullenger (New York, 1936)

From Laughlin's paper on "Eugenical Sterilization in the U S" presented to the International Congress of Population, Berlin (1935) it is clear that in the United States the biological impacts on legislation are already very extensive. The statute of 1907 passed in Indiana initiated the movement for the prevention of reproduction by definite strains of degenerate human stocks. Down to December 1934 sterilization operations were performed to the extent of 21 539. Among the patients for legal sterilization are mentioned the feeble minded the insane, the epileptic, the idiots, habitual criminals sexual perverts, moral degenerates and so forth. Sterilization statutes have been passed in thirty-one out of the forty-eight states. These laws recognize heredity as a major factor in certain types of heredity degeneracy. The quality of the future population is sought to be protected by removing certain individuals from the stock of parenthood of the next generation. It will be apparent that the Nazi law was anticipated by the Americans by a quarter of a century.* Sterilization, as practised according to American law has no reference whatever to race religion or punishment. It is "purely a biological or eugenical institution." But all the same, in regard to crime prevention eugenical sterilization may be considered a long-time factor in so far as inborn degeneracy is demonstrated to be closely related to the chances of development of a criminal career by the particular individual

Outline of a Case Study

By

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IN any scientific investigation consideration of methods is of first importance. Logically also the first step would be to decide upon a suitable method or methods. However, there are more important reasons for setting out early the essentials of a study which has to deal with predominantly psychological and social data. The problems of a maladjusted individual—a delinquent or a difficult child or a normal person either, for that matter, are for the most part highly specific, every one of them is a personality in his or her own right, and as such enjoys an independent existence whether ill or well fitting to the world of men and things around. Any generalisation concerning persons whose adjustment to community life is known to be defective is apt to do violence to the facts. Therefore an enquiry of this kind is bound to take a distinctive line.

Further, the case of a person, child or adult, whose ways of behaviour and conduct are such as to cause personal or communal anxiety is met with constantly at home, in the school, on the playground and in the spheres of trade, industry or state craft. It is a case the right handling of which is of immediate and practical consequence to the parent, teacher, the employer, the community or the state. For this reason also choice of proper methods for the study of highly practical problems of individual adjustment is of first importance.

Case study is the only satisfactory method that would give us an understanding of the individual adequate enough for purposes of diagnosing the basic errors in his or her personality make-up. It is a method of the psychologist. The historian or sociologist concerns himself chiefly with events but generally ignores the personalities who are responsible for shaping and vitalising them, though today a growing realisation of the need for psychologically oriented history or

sociology is witnessed in progressive quarters. The psychologist's enquiries, however go farther than a recording and investigation of the event alone: in this case the particular form that maladjustment takes, which may be denoted by any one of the conditions or a combination of two or more of them falling under the medico-psychological, psychosocial and purely sociological groups. But, it should be remembered, in none of these cases is the event an isolated one nor are the motivating factors apparent on the surface. They invariably are found to have a genetic as well as a critical phase, and their origin dates back to childhood days.

Now symptoms are not causes. They are not always direct manifestation of causes. Stealing for instance, is more often than not a substitutional form of delinquency. Hence symptoms prove nothing. An understanding of the symptom alone, therefore, would be unhelpful in prescribing remedial treatment. A lasting cure can be effected only when the symptom is traced to its cause. An understanding of the cause will help to reveal the true nature of the symptom. To this end modern psychology claims to present a definite body of methods and principles the practical application of which should guide the handling of problem individuals.

What, then are the methods of case study which the scientific investigator adopts for studying this subject? What are the facts to be desired how are they obtained, recorded and utilised? Briefly case study is nothing less than complete history taking with the sole object of gaining an understanding of the individual's assets and liabilities—physical and pathological condition physiological habits, social history abilities and aptitudes, character traits and temperamental qualities, educational and vocational achievement economic condition—in the past as they are at any particular time and the probable course of their development.

The topics about which data are gathered suggest themselves to be in the order they are noted in actual study (a) salient features of the present occurrence (b) present condition as ascertained from a psychological and physical examination (c) developmental history of the individual during childhood adolescence and adult life (d) history of the family. The detailed facts are to be found in the individual's personal and social life, in the history of the family and in the community and neighbourhood conditions. The business of fact-collect

ing proceeds by observation interview and by testing. The final record should result in a thorough understanding of the case expressed in the form of a diagnosis

PERSONAL AND FAMILY DATA FORM FOR 'PROBLEM INDIVIDUALS'

1 Name. Age Sex. Place of birth. Present residence Occupation Address.

Referred by whom Sources of information

Nature and number of offences

Trial, conviction and court sentence (if any)

Nature of 'difficult' behaviour, since when the difficulties arose

Has the case been handled previously? By whom, when and how?

2 (1) Father—live or not, age, whether living with family, occupation, income (weekly or monthly) Habits and hobbies Dominant character traits

Mother—live or not, age, whether living with family, occupation, income (weekly or monthly) Habits and hobbies Dominant character traits

Step parents (if any)

Extent of disparity in age between parents

Birth order—eldest, youngest or the middle Age differences

Other children Whether living under the same roof

(u) Parental Discipline

- (a) Too strict or severe—"hot-house" type (liable to result in open assault, running away from home, theft, desolute life)
- (b) Too weak and easy going (springing from physical defect or ill-health, incapacity of the parent due to old age, laxity in morals from feeble-mindedness, extreme poverty, frequent or prolonged absence from home, etc)
- (c) Union of licence and severity within the same home, in the person of the same parent Parental differences over the question of discipline enforcement, particularly display of such differences in the presence of the child
- (d) Absence of any sort of discipline (Pampered or unwanted child)

(iii) Home environment (Social and Psychological)

- (a) Obscene language. Immorality on the part of other members of the family Sexual molestation. Irregular unions contracted by the parents. Godless atmosphere. Absence of or indifference to healthy conventionality etc.
- (b) Parental alcoholism. Prostitution Gambling and betting
- (c) Company of convict or profligate parents or other near relatives.

(iv) Economic and Social Conditions: Home, Neighbourhood and Community

- (a) Total income (weekly or monthly) Number of dependent members in the family Rise and fall in the economic and social status of the family
- (b) Habitation Street, rent, number of rooms Sanitation Culture and religiosity
- (c) Number of orphan children in the neighbourhood and community
- (d) Income per capita. Community standard of living Disparity between the two.
- (e) Facilities for recreation at home how and where the children spend their leisure hours

(v) Conjugal Conditions

- (a) Proportion of married to unmarried members in the family and in the community Distribution of the sexes in the family and in the community Marriageable age for boys and girls. Prevalence of dowry system in the community
- (b) Number of illegitimate children in the community and in the neighbourhood.

3 Family History in respect of father's family mother's family

Race. General health and specific ailments (the latter repeatedly occurring occasional) Habits. Intelligence General emotionality Dominant character traits Morality Criminality Pauperism. Prostitution. Constitutional or nervous ailments of hereditary nature

4 Medical History of the Individuals.

- (a) Infectious, nervous and other diseases and injuries What and when.

- (b) Present physical condition: physiognomy and general appearance, deformities and disabilities, height, weight, vision, hearing, general health, special ailments—chronic, acute; what, when and how long a period
- (c) Physiological habits: Constipation or other digestive difficulties, Appetite, Insomnia, Bed wetting, General regularity of habits, Susceptibility to fatigue, Hypochondria
- (d) Habits in regard to sex (excessive masturbation, rigidity, perversions), Diet, Tobacco, Stimulants or drugs
- (e) Nervous or mental afflictions: "Nervous Breakdown", Periods of depression or excitement, Attempts at suicide, Hysterical manifestations, Occurrence of delusions or hallucinations.

5 (i) Abilities and Achievements

- (a) General ability ("intelligence").
- (b) Special abilities (if any): language (verbal), Mechanical, Musical, Artistic, etc.
- (c) Special functional (cognitive) disorders as in attention, memory, association, perception, judgment
- (d) School achievements: literary, vocational, technological

Note: Among young delinquents 'verbalists' are often met with

(ii) Motor and Manual Skills. Sensory Discrimination.

- a (a) Speed of reaction: rapid, medium, slow
- (b) Practice at hand-work
- (c) Knowledge of skilled activities: playing on a musical instrument, operating machinery, athletics, etc.
- (d) Discrimination in taste and smell

6. Vocational fitness and Conditions of employment.

(i) Preparations to take up employment

- (a) Vocational training, what, when and how long
- (b) Period of change from school to career, involving the break in life, the new demands, the sudden responsibilities, access to freedom and ample funds.
- (c) Disappointments and failures in getting jobs

(ii) Uncongenial employment.

- (a) Work being too difficult and the child dull.
- (b) Work being simple, tedious or mechanical and the child too bright.
- (c) Absence of outlet for legitimate self-expression and genuine emotions.

(iii) Precarious conditions of employment. First and subsequent situations. Reasons for change.

(iv) Present vocation. Hours of work. Wages (whether progressive) Security Leisure.

(v) Habits of work.

- (a) Regular Adequate. Spasmodic. Insufficient.
- (b) Objective in working to acquire skill to solve hard problems, to earn and amass wealth, etc.

7 Recreation and Leisure hour Occupations.

(i) Friends and companions.

- (a) Of the same age sex and family and of the same locality
- (b) Adult companions. Direct and indirect influence of sexual nature (frequently homo-sexual) Their vocation in life

(ii) Chief habits, hobbies and amusements.

- (a) Betting and gambling
- (b) Frequent visits to cinema shopping centres, public house localities cafes and restaurants, railway station.
- (c) Reading and writing Painting Musicalness, Mechanical invention.

(iii) Facilities for sports and amusement.

- (a) During mid-day and evening hours, the tired and hungry moments when work or lesson will be over
- (b) Holidays with social habits with freedom from the discipline and conventionality of work a-day life

Note—Dearth of outdoor space condemns the child to turn the street into his playground. Absence of facilities for wholesome recreation and of proper guidance drives him to indulge in ragging

8 Character and Personality.

(i) General emotionality

- (a) General type—repressed and sensitive, unrepented and easily excitable
- (b) Objects or situations, other than those common to everyone, that are most likely to arouse emotions of anger, fear, disgust, self-satisfaction and love
- (c) Mannerisms that may be considered as releases of emotional tensions—drumming with fingers while thinking, smoking while at work, etc.

(ii) Neurotic symptoms

- (a) Walk or talks in sleep Day dreaming Dreams Sleeplessness Nightmares Headaches Hysterical manifestations
- (b) Excessive fear of dark places, open places, dogs, cats, death, etc.

(iii) Strength, development and modification of specific instinct tendencies Provocative impulses.

- (a) Sex (positive) Its degree of activity from childhood Nature of its integration or disintegration with other activities Course of development—normal, regressive at times, homosexual Things that arouse sexual attraction Knowledge (functional) of sex life

Sex (negative) Unsatisfied affection at home Inadequate control during spare hours Abnormally repressed sex due to the influence of religion, or authority

Special symptoms (if any) during the transitional stage from love of self to object love

- (b) Self-assertion (Vigorously developed in youngsters of wayward nature Instances feats of revelry, daring and defiance among boys, vain and romantic lying, later theft and immorality among girls)

Correlation between ability and ambition Attitude to praise, blame and indifference

- (c) Acquisitiveness Hiding and collecting tendency Love of possession Note—thieving may be a substitutive reaction for some other impulse at work

- (d) Anger Its strength and frequency of occurrence. Its immediate reactions—physical violence to persons, physical violence to property angry behaviour murder and murderous assault. Note—Sometimes anger is the result of thwarting of some other prior instinctual tendency
 - (e) Wandering (Truancy is the first step leading to juvenile crime) Children having parents of wandering nature. Poor home discipline. Bad companions. Attraction of the streets. Desire to earn money Mere restless rowing towards adolescence. Nomadic tendency released in cases of hysteria, epilepsy etc.
 - (f) Hunger Starving and famished. Gluttony Acquired taste for eatables and drinks.
 - (g) Hunting Generally a prior inner impulse like hunger sex or mere restlessness at work. Sexual misbehaviours are both precedent and antecedent phenomena.
 - (h) Curiosity (An intelligent specimen of truancy) Love of adventure. Desire to know Unhealthy curiosity particularly over sex matters, developed as a result of parental reticence, excessive timidity etc.
 - (i) Herd or Gregariousness. Love of company Aimless rowing in the company of friends. Desire to entertain friends. Reactions—mischievous damage, petty theft, truancy fighting gambling burglary homo-sexual practices.
 - (j) Cruelty (blend of self assertion curiosity and hunting at times combativeness or anger) Symptoms of a gruesome tendency to find joy in the anguish of another
- (iv) Impulses affecting criminality by their deficiencies. Inhibitive or deterrent instinctual tendencies.
- (a) Fear Impulse to escape by flight—for instance in truancy in vagrancy Tendency to secretiveness, self-concealment lying Tendencies indicative of too little fear—reckless, headstrong venturesome Tendencies indicative of too much fear
 - (b) Disgust. (A somatic motive subverting primarily the bodily needs.) Foods and smells that disgust to the point

of various sources. Kind of work that interests most and that which is least liked. Persons whose company is loathsome.

(c) *Crime*—(Regressive wish in the young to punish others for making them to grieve over the victim's misfortune.)
 (d) *Delinquency*—out of the tendencies of school life. Sense of departure from the responsibilities of life at childhood. Persistent feeling of wickedness. Haunting of a feeling that one in the past was an undesirable one and of evil intentions.

(d) *Selfishness*—Degree of suggestibility. Factors that make suggestibility.

(e) *Affection*—(The main, perhaps the only, source of altruistic conduct.) Lack of tenderness and self-submissiveness. Misguided affection sometimes an incentive to crime.

(f) *Joy*—Young delinquents are by nature merry and pleasure-seeking so artimes insensitive to pain.

(g) *Play*—Overflow of animal spirit in the young. Much seeming criminality is often simply play, or a substitutive reaction for almost any kind of impulsive or imitative activity.

(v) *Special emotional trends and conflicts, with particular reference to the individual's attitude to other members of the family.*

(a) Sentiments of attraction and repulsion towards persons, things and ideas and ideals.

(b) Mixed (ambivalent) sentiments of love and hate, submissiveness and aggression towards one and the same person.

(c) *Step mother complex*—Complexes of authority, disgust, inferiority and self assertion. Sex complexes. Moral conflicts (resulting from the conflict of two incompatible impulses—a temptation,) due often to the puritanical traditions in the family, absence of any sympathetic confident who might show an understanding of the individual's problems.

9 Mental Abnormality

(1) "Borderland" conditions. Emotionally maladjusted. Emotionally unstable. Mentally peculiar.

(ii) **Neuroses.** Neurasthenia (a dull listless irresponsible condition) Anxiety states—symptoms truancy flight from home, frequent change of vocation, etc. Obsession neuroses. Kleptomania homicidal mania. Phobias. Other hysterical manifestations.

(iii) **Psychoses.**

- (a) Functional—Dementia Praecox Maniac-depressive. Paranoia and related conditions.
- (b) Organic—General paresis. Toxic and Senile psychoses. Epilepsies. Abnormal conditions associated with certain physical diseases.

10. The individual's own story with special reference to—

- (a) his motives (alleged, avowed, rationalised or half unconscious)
- (b) his present situation as he views it
- (c) his impression of past practices, acquaintances and other influences
- (d) his outlook and intentions for the future.

11 (i) Summary of conditions in regard to the history of the family history of the individual, history of the present crisis and the present conditions of the individual.

(ii) **Conclusions.**

Some Psychological and Sociological Aspects of Crime

By

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THE problem of crime has so far been considered in India mainly from the administrative point of view. Some of its most important psychological and sociological aspects have not, I am afraid, received the attention their importance deserves. I propose to stress some of these aspects on this occasion.

If the punishment for a crime is based only upon the face value of that crime, gross injustice may in some cases be done to the offender, who may not be a criminal at all but a patient. The particular crime for which he stands convicted may have been caused by temporary mental aberration, which in turn may have been the result of circumstances over which the helpless offender had no control. In all cases of this kind it is evidently the duty of society to find out the cause before administering the cure. If the cause is not correctly diagnosed, great harm may be done to the morale of the individual. While it is the duty of society effectively to stamp out all anti-social tendencies in order that man may live in peace with man, it should also see that undue harshness and severity are not exercised in dealing with individuals, that in trying to effect a cure it does not kill the patient.

This brings us to a very vast field, namely, to the region of the causes that lie behind crime, much of which is only apparent, not real, crime. There is, first of all, the influence of the street which in the majority of cases gives the individual not only an inadequate, but in many cases a distorted, conception of life and its values. The street urchin, who later blossoms into a street loafer, lives and breathes and grows up in a world which presents innumerable spectacles of selfishness, cruelty and vice in many forms. He is hardly afforded a glimpse into the infinite possibilities of the really useful life of a citizen. The whole social atmosphere around him militates against the

formation of the right points of view and the right emotional attitudes.

Poverty is a very fertile cause of much delinquency in the growing youths. The child of poor parents grows up in a home which is the perpetual scene of petty quarrels and bickerings. He finds his mother slaving for the whole day and offering irritation instead of affection to him. His father returns at the end of the day tired and seldom in the best of spirits, and does not bring any sunshine into the house. Shouting beating and other forms of violent display of temper are the daily experience of the child of poor parents. Restraint of feeling and refinement of disposition are unknown. It is evident that the child brought up in such surroundings has his attitude towards life twisted in a certain fashion and can hardly be expected to develop into a good citizen.

Poverty's twin sister is ignorance. The appalling amount of illiteracy in India accounts for a very large proportion of crime in this country. The figures for illiteracy in India are practically the same as the figures for literacy in most of the advanced countries of the world. In the towns only about 7% and in the country about 2% can read and write their names. Many of those who manage to acquire a certain amount of literacy easily relapse into illiteracy when they leave school and enter life. A better day now lies ahead of this country which has at last realised its shameful educational backwardness, and has seriously addressed itself to the problem of the liquidation of illiteracy through the universalisation of primary education and adult education. The Congress provinces deserve to be warmly congratulated on their adoption of this two-fold constructive educational programme. I have no doubt that the removal of ignorance will result in the relief of much of our economic distress, and when the two-fold curse of ignorance and poverty has been lifted from the country crime is bound to diminish.

I have dwelt at some length on these two causes of crime namely poverty and ignorance as I believe that the problem of the prevention of crime deserves far more attention than it has received in the past. In connection with the problem of prevention I may be permitted to instance a few other causes.

I have already referred above to the evil effects upon the moral development of the individual of the cramping atmosphere of a poor

home. In such homes not only is the general atmosphere depressing, but there is also a conspicuous absence of any organised attempt at the training of children. The social education of the child suffers seriously because of the low moral ideals of the parents and because religion is too often confused with the ritual. Without a properly developed moral ideal and fully awakened religious sense no individual can be expected to make a serious effort to bring his general conduct into conformity with the prevailing moral and religious codes. Religious education, not only of the growing individual but of the inmates of the jails, should be lifted above the merely denominational plane, and its code should be furnished by the largest common denominator of all religions, so that toleration and broadmindedness may be inculcated.

Poverty is itself the result of certain economic and social conditions. Until these conditions are ameliorated it will continue to cripple the development of many individuals. There is much enforced permanent and seasonal unemployment, not only among the illiterate masses but also among the educated classes.

Most of the advanced nations of the world are alive to the necessity of making suitable provision for healthy recreation. India lags very far behind other countries in this respect. In the large industrial towns of India, factory workers and members of the lower middle classes generally have hardly any opportunities for recreation. They are usually seen wandering aimlessly in the bazaars, sitting listlessly in public parks, or frequenting cheap places of amusement. They sometimes resort to brothels or toddy shops to satisfy their craving for change and excitement. Picnicking, hiking, swimming and other forms of healthy individual or group activity are unknown to them. It is the duty of the nation to make ample provision for the very natural desire for change and recreation which every healthy individual possesses. Work along the lines of the programmes of the Workers Educational Association in England will be very desirable. Some sort of club life for the poor workers is essential, if we want to save them from temptation.

The attitude of the general public towards this very important cause of crime has unfortunately been one of indifference.

The problem of beggars in India constitutes a serious menace to the well-being of the country. Not only is their influence morally

contagious, but their vast body represents a terrific waste of man power which can be utilised for the betterment of the country. Recently some big cities have taken steps to stop begging but the methods adopted by them have been mainly of a negative character. Our efforts should be directed not only towards the prevention of beggary through mere prohibition, but we should seriously try to utilise the large amount of man-power that is locked up in the vast body of our Sadhus and Fakirs. This will certainly reduce the volume of crime in the country and will raise the general tone of the population.

One very important aspect of the psychology of crime deserves special notice. I mean the psychology of repression and mental conflict. The young child finds himself pitted against tremendous odds and his wishes which he considers very legitimate are constantly thwarted even by those who are closely related to him and from whom he expects greater understanding and sympathy. Now every normal child has a strongly developed sentiment of self regard or self-respect and he finds it very hard to put up with the humiliation of defeat and frustration which he encounters in the process of making adjustments to the outward reality. An unduly submissive child will perhaps accept the situation, but a normally self-assertive child will kick up and will try to make himself felt. If he does not succeed then instead of brooding he will try to introduce a pretence into his life that the disagreeable problems of his life simply do not exist and that he is the master of the situation. The wishes and tendencies, however that are thus denied expression are not annihilated, they continue to exist as rebels and outlaws in the depth of his mind unknown to and unsuspected by their possessor and expressing themselves in a variety of ways e.g. dreams, day-dreaming, apparently meaningless tricks and mannerisms of speech or manner, inexplicable habitual forgetting of a particular thing, stammering, hysteria, hoodliganism, stealing and so on. Society in such cases very often becomes a substitute for the over-strict parent or other person responsible for the repression of early natural wishes and the individual tries to soothe his wounded feeling of self-esteem and tries to overcome his sense of frustration and failure by indulging in a multiplicity of forms of anti-social conduct. Such an individual and there are many such in our reformatories and jails, is a patient not a criminal. Psycho-analysis in such cases holds out a promising field for research and investigation of individual cases e.g. of sexual offences and alcoholism arson and cases of klepto-

inmate. Such individuals are, indeed so many social problems requiring careful treatment. Any clumsy handling of them will mean the loss to society of so many useful lives that could be reclaimed and made to fit into its existing framework. We owe it as a duty not only to them but to society to cure them, to break up their complexes, to reassociate the fragments of their personality that have been torn asunder by internal conflict. This points urgently to the necessity of establishing clinics attached to jails and reformatories for the systematic and prolonged analysis of such cases by experts, as also to the desirability of encouraging research along the right lines in Universities and Medical Colleges. Europe and America have already recognised the importance of research and investigation of such cases and have already made much headway. India is also, gradually but surely, waking up and realising the necessity of work in this direction. Lt Col P. K. Tarapore, I M S, in his admirable little book on Prison Reform in India has pointedly drawn attention to this effect. The present Conference also constitutes a clear proof of the recognition of the importance of scientific investigation of the subject of crime in its manifold aspects.

Punishment to be human and really reformatory should be free from all taint of vindictiveness. We no longer believe in the crude and barbaric medieval methods whereby society brought an unnecessary amount of its strength to bear upon the crushing of the malefactor. If an individual proves refractory to society, his segregation from other people may be necessary, but it would be sinful to restore him to society with his spirit totally crushed and his self-respect completely shattered. Such an individual will find himself a misfit in society and the task of adjustment to society will present far greater difficulty to him after his release from jail than it did before he became its inmate. The problem of providing suitable opportunities for released prisoners is a very serious one, and as it will be sometime before society overcomes its repugnance towards all ex-convicts, it is necessary to establish certain institutions where these unfortunate persons could do socially useful work of different kinds, suited to their capacity, and prove their bona fides as normally functioning citizens, before they can be reabsorbed into the normal structure of society. For instance, efforts should be made to find work for these people in factories and on farms, and in various commercial and industrial concerns. Only a very few of the really confirmed cases will need vigilance after re-

lease from jail and these could be dealt with as a separate class. If during their term of imprisonment in jail the majority of prisoners have been allowed to discover their social possibilities and enabled to learn useful arts and crafts, and if they have not become dehumanised and brutalised by over-rigorous discipline, they ought to come out of the jail chastened and determined to make amends for their past mistakes. The main lines of reform, therefore, will lie in the future along a better diagnosis of individual criminals with the object of helping them towards social usefulness and self-confidence and along their speedy reabsorption by society

Problems and Possibilities in the Field of Probation

By

S. NAGESWARAN, Chief Probation Officer, U.P.

YOUTH AND CRIME

It is from the cities in India that a new class of criminals is being recruited, viz., youthful and juvenile offenders. These are usually youths who have inherited an unstable nervous organisation, who are tramps belonging to overcrowded or broken homes, who are unemployed and have taken up street trades in the city that are particularly hazardous morally, or who belong to notorious delinquency areas in the city where dirty and dismal slums, gambling dens, obscene theatres, brothels, dark and blind lanes amongst which they are reared do not give opportunities of developing normal social habits and attitudes. The gang is also there with its leader, a goonda running a cheap tea or roti shop with a prostitute as an ostensible means of livelihood. It is ever ready to accept these young fellows and expert instruction in picking a pocket, getting skeleton keys, selling stolen goods to chora bazars and tricking the police is not long forthcoming. Thus the neophyte is certain to become a petty thief, a shop lifter or a sex offender or to commit other increasingly serious crimes.

PROBATION AS A METHOD OF TREATMENT

We of the Profession are interested primarily in the process of first arrest and court experience which is a sort of sieve to select these misfits of society and the choice of the best treatment of a convicted person under the First Offenders' Act is one of the most responsible, difficult and important tasks with which we are confronted. Probation is one available treatment. In order to avoid covering too much territory this paper will limit itself to considerations of Adult Probation under the Probation Act for offenders under 24 years where a Probation order can be passed. Juvenile Probation under the Children

Act being of a different character will not be taken up. Time will not permit it, and furthermore it might lead to more or less confusion in measuring and applying the facts and plan presented.

The theory of Probation is well known and the fact that the First Offenders Probation Act has been enacted in Madras, U P., and Bombay is conclusive evidence that it has been accepted as a method of treating persons convicted of crime. Let us at the outset be quite clear about the meaning of Probation and what it stands for

Probation is a method of treatment or punishment by which the community through its courts, seeks to supervise, discipline, rehabilitate and control convicted offenders before commitment to penal institutions. Primarily its object and purpose is to protect society. In this respect it differs in no way from imprisonment. On the other hand, while its objectives are the same, its methods are radically different. Probationers are conditionally liberated in the community subject only to restrictions imposed by the court and the Probation Officer. Here the difference between these two forms of treatment is fundamental and determines the policies and procedures followed by Probation Officers.

Handling of offenders under the First Offenders Probation Act involves at least the court, the Probation Officer the offender and the community. Let us consider the court which means the magistrate of the court for with him the plan begins and ends.

A magistrate is a person, a lawyer by education training and experience. He knows the law pertaining to the case a man of character and good judgment, and usually conducts the trial honestly fairly and impartially. But under a system of Probation where we are concerned with the individualistic treatment he must be further prepared by being well acquainted with psychology social case work social sciences and criminology. He should be well acquainted with the correctional institutions of the province together with their respective problems for now the handling of offenders by him involves all of these factors.

Magistrates may be guided in the selection of cases by their scientific knowledge human nature and the opinion of the Probation Officer who will have the control of the case.

The next person playing an important part in the Probation System is the Probation Officer

The extent to which the concept of duty and function which the Probation Officer possesses determines the effectiveness of the Probation System. If the Probation Officer regards his task merely as the negative administering of threats without a consciously projected programme of improvement and rehabilitation, then Probation is only another form of leniency to be condemned. Probation, on the contrary, is a highly delicate and specialised task in the adjustment of human relationships. Essentially, the Probation Officer is an educator. While an institution creates its own facilities to make these necessary adjustments, Probation Officers must depend upon community resources for such help. Consequently, the task requires not only specialised skill on the part of the officers with energy and imagination, but a thorough knowledge of such resources and the ability to bring them into play whenever and wherever needed.

I believe with such experience as we have secured that the right use of Probation under the U P First Offenders' Probation Act 1938 is due to the following reasons

(1) Our band of well trained Probation Officers who were trained at The Sir Dorabji Tata Graduate School of Social Work, Bombay, and who are equipped to conduct scientific social investigation, Social Case History, Social Diagnosis, case planning, social treatment and case recording and intensive supervision

(2) The interest and co-operation which the District Magistrate gives for Probation

(3) The confidence of the Magistrates in the Probation Officers

(4) The fact that all persons violating the conditions of Probation are promptly reported to the court

(5) The small percentage of revocation of Probation.

The Probation Department of the U P Discharged Prisoners' Aid Society constituted by the Government exercises a general supervision over all Probation matters and its duties and powers are as follows.

(1) It shall endeavour by such means as may seem best suitable to secure the effective use of the Probation System.

(2) It shall prescribe the form of records and reports to be used by the Probation Officers and shall adopt general rules which shall regulate methods of procedure in the administration of Probation including investigations, supervision, casework, record keeping etc.

(3) It shall discuss from time to time with the Probation Officer each of his cases under his supervision in case conference and afford him such help and advice in carrying out his duties.

(4) It shall receive and consider the written and oral reports of the Probation Officer and advise the Government and the Central Society in the making of any communication which may be found necessary

(5) It shall cooperate in promoting measures for the effective treatment and prevention of delinquency

Of all the elements involved in the individualistic treatment of offenders, the Probation Officer is the most important. He must be capable and not subject to failure or omissions in the performance of his duties. Amongst his many qualifications he should have at least the following

(1) He must be a quick and accurate judge of human nature.

(2) He must have perfect poise and self control

(3) He must be a psychologist by intuition and study

(4) He must have the gift of leadership.

(5) He must have broad and inspiring outlook on life and its opportunities and have a system or plan by which to follow it.

(6) He must be capable of being a soothing likeable personality to some and of being commander to others

(7) He must be patient but not too credulous when listening to the offenders case

(8) He must like humanity and be zealous to work for it.

(9) He must have a knowledge of and respect for discipline and without variation insist on others.

(10) He must be of an industrious nature.

(11) He must be thorough

(12) He must be loyal to the Court and fair to the probationer and realise that upon his efforts depend the results sought for the probationer and community

(13) He must be religious, but not to the point of arousing resentment in the probationer

(14) He must be sympathetic but not sentimental and be able to withstand the clamourings of the probationer's relatives and friends

(15) He must be neither a bully nor a coward, but a real human being, refined, considerate, fair but firm

(16) He must be able to organise a community for Probation and work with groups, Social, Religious, Welfare etc

(17) He should be very conservative and cautious in the use of his tongue when speaking of matters pertaining to any of the probationers, their families, associates, and all facts and circumstances he has learned concerning the probationer and his offence while making his investigation and during his personal interviews with the offender.

If the Probation Officer meets these high demands and aims to make Probation his life's work, his position is elevated to the dignity of a profession and he should be fairly and adequately paid by the public to whom he devotes a life of service. I believe that the Probation Officer is the only administrative officer who can show by the records an enormous saving in men and money

PROBATION AND SOCIAL INVESTIGATION

All good Probation work proceeds from investigation and the importance of this first step in case work can hardly be overemphasised. But at present the First Offenders' Probation Act gives full discretion to a Court to pass a Probation Order even without Social investigation by the Probation Officer. Without such an investigation the purposes of the Act will be defeated by its abuse in granting the privilege to undeserving persons and withholding it from those who are good risks. Without sufficient information regarding the offender's past the Court may and sometimes does extend the privilege to an anti-social person. The recommendation of the Probation Officer is supported by information ascertained after careful investigation. It is imperative that the Probation Officer be a well trained skilful investigator. The service demands a very high type personnel.

The U P Probation Department's requirements in making the Preliminary Investigation are as follows —

(A) Legal History of the offender

- 1 His previous court record, if any
- 2 His offence summarised
- 3 His explanation.
- 4 His motives and underlying causal factors.
- 5 His attitude.

(B) Personal & Social History of the Offender

- 1 Personal History including age caste religion, sex, place and period of residence in different places
- 2 Facts concerning his school record and early life.
- 3 His work record This concerns the length of employment in each place, type of work, reliability skill and industry of offender His attitude towards his employers and fellow employees.
- 4 His outstanding character his companions.
- 5 His religious habits and early training
6. His mental, physical and emotional condition.
- 7 Institutions, Individuals and Social Agencies interested in the offender and his family
8. His Home conditions and Neighbourhood influences.
9. His Problems presented with contributory factors.
10. His assets.

(C) Recommendations regarding Probation and plan of treatment.
Signature of the Probation Officer

In preparing to give guidance assistance and supervision to the probationers, we require our Probation Officers to work by enlisting the combined forces of home school church settlements playgrounds and other available Social Organizations working under skilled personal leadership for a central well diagnosed goal

PROBATION AND THE VOLUNTARY WORKER.

Since the normal load of cases is not the good fortune of the average Probation Officer a scheme of enlisting Voluntary Social

Workers would seem a practical necessity. Moreover, if I had only fifty cases I should have one voluntary supervisor for each probationer, not only because of the opportunity of intensive treatment and the control feature but because the problem of the maladjusted probationer is essentially one of human relations adjustment to others. Providing favourable influence is the best insurance against unfavourable influences. Further we cannot expect the probation movement to succeed until the people believe and accept the programme and they won't believe or accept unless they are interested. And the best way to arouse and continue their interest in Probation Work is to get the intelligent Citizen into action.

And now the next person in the process is the offender.

No hard and fast rule can be laid down as to the type of offenders who would be considered for Probation. But in no case can a first offender under 24 years where a Probation Order can be passed should be sentenced to imprisonment unless it is determined that he is not a fit subject for Probation. It is my view that the Act applies to first offenders whose release on a Probation Order will not endanger the public and that where there is reason to believe that the individual will make a serious effort to overcome the abnormalities and difficulties which brought him into court. In general the offences contemplated, as I view it, would be largely those of a more or less minor character, are those induced by youth, inexperience, poverty, superstition, jealousy or heat of passion. Western experience has demonstrated that Adult Probation is not adapted to the needs of professional, habitual or incorrigible criminals, confirmed drug addicts, degenerates, mentally defective and feeble minded law breakers or others habituated to criminal ways.

The Experience of America has also proved that failures in adult Probation are due to the following —

- 1 Offenders placed under supervision without previous preliminary investigation by the Probation Officer
- 2 Offenders having previous court or institutional records
- 3 Offenders who have no fixed place of residence or family connections in the community
- 4 Mentally defective, feeble minded or insane offenders

And now we come to the final element in the process, the society.

To prepare any section of society for Probation the ground must first be broken by a dignified educational campaign as to how such a system would aid in the administration of criminal justice and in the protection of society. We need such a campaign not only for the public but also for the magistracy and the Police. It must be shown to the police that the purpose of this movement is to eventually aid them in their task of law enforcement. We must be able to show them that properly administered it will help to rid society of the habitual and confirmed criminal and aid in the enforcement of laws. Not only the Officers but the average man must be made to understand the real purpose of Probation. It will not be out of place for me to mention our work in educating the Public opinion. About 2000 copies of the pamphlet Probation and the Role of the Magistrates prepared by us were distributed to all the Magistrates, District and Sessions Judges, Police Officers and the District Committee and Central Committee Members. Pamphlets in Hindi and Urdu on the Probation system were also distributed to the intelligent public. "Probation Corner" is a regular feature of the "Penal Reformer" wherein we discuss our day to day problems. We hope that this campaign will go a long way in securing the co-operation of the Magistracy the Police and the intelligent public.

Having discussed the problems and possibilities of Adult Probation I would now proceed to make a few suggestions.

A FEW SUGGESTIONS

(1) Sometime ago a prominent Prison Administrator of a major province in our country told me with his characteristic frankness that he will be only too glad to hand over the charge of the Probation Department to a trained Officer the moment his Government takes the initiative in the matter. What is true of that Province is true of many other Provinces in our country and there is a crying need at present for well organized Probation Departments to co-ordinate and supervise Probation Work both Adult and Juvenile.

(2) Along with this the full potentialities of Probation as a crime preventive will be reached only when these Probation Depts are staffed with an adequate number of thoroughly trained and experienced Probation Workers owing to the failure of the untrained and inexperienced to measure up to the difficulties of the task. The minimum qualifications of a Probation Officer should be as follows —

(a) A good general education preferably graduation from a University, coupled with special training at the Sir Dorabji Tata Graduate School of Social Work, Bombay

(b) Experience At least one year in case work under supervision

(c) Good personality and character Tact, resourcefulness and sympathy

(3) The compensation of the officers should be such that the best type of trained service can be secured The salaries should be comparable with those paid to workers in other field of Social Service

(4) Psychiatric and psychological study of the offender should be made at least in those cases in which the Social investigation rises a question of special need for study and should be made before decision concerning treatment, but only by a clinic on the model of the Bombay Child Guidance Clinic

Such a clinic for the study of child, and youthful offenders should be a separate organization The personnel required includes a physician trained in psychological medicine, a psychologist and psychiatric Social Worker

(5) Voluntary workers should be carefully selected and should be under the supervision of the paid worker Emphasis should be placed on the strict accountability to the court of all officers paid or unpaid doing Probation Work The Officers should be provided with an adequate means of transportation

(6) Supervision of the work of the Probation Officers should be exercised by a Provincial Supervisory Officer The supervision should be advisory both to the Probation Officers and the Courts as to all features of the service, but with power to require the keeping of prescribed records and to compel periodical reports to the supervisory officer

(7) Research Department as a branch of Probation Department.

Every Probation Department should move in the direction of instituting research department and thus develop accurate data which ought to be interpreted to the public

(8) Individual treatment in Modern Probation Work.

Modern probation work aims at a complete understanding and amelioration of all kinds of needs of the Probationer and the prevention of these by removing the recurrent causes which then arise Above

all it believes only in the efficiency of individual treatment which later is accompanied through the utilisation of available community resources that may be required. Such community resources comprise besides the establishment of Probation Homes and Hostels, the organization of scientific information and advice appropriate and expert training and guidance of the probationer in a suitable environment as well as a new social milieu group sympathy and patience which may be indispensable in dealing with a maladjusted Probationer.

Social Service Exchange

(9) Every important city in our country should organize Councils of Social Agencies which coordinate and unify social services by both private and public agencies and maintain a social service Exchange or a Central Index. In the Exchange record of each case investigated or helped is kept, which is at the disposal of all service agencies which become members of the Exchange. Unnecessary duplication of work and overlapping of social service are thus avoided while co-ordination often leads to greater service efficiency in Probation work.

A New Social Conscience

(10) For the criminal and probationers there must arise a new attitude of goodwill and helpfulness, born of a new appreciation of his physical and mental equipment and his social conditioning. A National Probation Association under the auspices of the Indian

League of Penal Reform.

(11) I would finally conclude by suggesting the formation of a National Probation Association on the lines of those of U S A or England. Such an organization would help greatly in the dissemination and the development of Probation work on the best lines. Many of us at present carry on our difficult task in isolation and we are largely dependant on our own resources. There is therefore an obvious need for such an organization which may be formed as branch of the Indian Penal Reform League and by which we can obtain contact with others working in the same field and share each other's experience. That will be the surest and the best way of promoting the extension and development of Probation work on modern lines.

Some Aspects of the Law Governing Criminal Tribes

By

MR. D. S. JOSHI, I.C.S., Bar-at-Law, Collector of Surat.

1 I have advisedly chosen this somewhat vague title for this paper. I do not propose to go over the whole field of the legislation in respect of criminal tribes. I shall also be confining myself to conditions in the Bombay Province.

2 Before I enter into discussion of some of the problems let me make one position clear at the outset. I am not entering on this occasion into the question whether such special legislation for criminal tribes should exist at all. There is a certain section of opinion which considers that the ordinary criminal law should be sufficient to deal with all the problems concerning criminal tribes. For the present purposes I shall proceed on the presumption that the basic need for such legislation in this matter is accepted.

3 The distinguishing factor of criminal tribes legislation is that it deals groups rather than individuals. In this respect it is unique for it imposes restrictions on a group of people and not merely on particular individual members thereof. Important consequences follow both in the legislation and administrative fields because of this distinction and I propose to-day to touch on a few questions which assume importance because of this distinction.

4 The present law on the subject is the Criminal Tribes Act 1924 supplemented by rules made by Provincial Governments. The general scheme of the criminal tribes Act is that certain groups of people who can be considered as criminal tribes are subjected to certain restrictions. It is not always that this basis of the scheme is borne in mind. For it is apparent that there is sometimes a tendency to utilise the machinery of criminal tribes legislation to individuals rather than distinct groups. This is clear when we remember that

under this Act are treated what are called 'Mixed gangs' the members of which have nothing in common except their criminality

5 Secondly it is clear that the group to be dealt with must really be criminal. That necessarily means that what we may call the incidence of criminality in that group should be high otherwise there would be no meaning in distinguishing one particular group from other sections of the whole community whether along lines of caste locality profession or the like. The Criminal Tribes Act uses the expression "addicted to the systematic commission of non-bailable offences" in this regard and although it thus imports into its scheme the substantial incidence of criminality it leaves the actual decision in particular cases, to the executive government.

6 No Government has so far attempted to lay down practical standards in this respect and the application of this Act to particular criminal tribes has been on the whole on purely empirical lines. As may be expected from this groups have been notified as criminal tribes in case where not even one per cent of such a group could be considered to be "addicted to the systematic commission of non-bailable offences." To take only one instance. The Vanjans in this Province have a population of over 50,000. Yet the number of persons among those who in 1937 were either registered under the Act or were interned in settlements did not exceed 70 or less than a quarter per cent of the whole. Similarly although there may have been occasional reviews of the position governing particular criminal tribes notified as such there appears to have been no systematic effort for a regular review of the position of such tribes.

7 It is not always useful to reduce factors like incidence of criminality to definite arithmetical figures. But it should be possible to lay down as general guide wide limits beyond which the application of this special legislation would not normally be desirable.

8 Having considered which groups should properly be adjudged criminal the next question is how to deal with this group or particular members thereof. The scheme of the existing legislation as I see it is that tribes which normally lead a settled existence should be dealt with mainly by a close supervision on their usual place of residence. While in the case of tribes which lead a nomadic life the scheme is in the first place to restrict them to a specified area and then if it became

necessary to provide for settlements where such groups or members thereof could be interned. Perhaps I may make my meaning clearer by reference to the actual provisions in the Act itself. Internment in a settlement can be secured under section 16 of the Act and this can be done only in those cases in which sec 11 has been made applicable to the tribe. Now section 11 provides that a tribe may be restricted in its movements to any specified area or settled in any place of residence. The idea of making the tribe settle down in a particular place is clear here.

There is then sec 10 which provides that every registered member of a criminal tribe may be required to report himself at fixed intervals and notify his place of residence and any absence or intended absence from his residence.

9 The condition precedent for internment in a settlement viz. that the tribes should be made to settle in a specified area is significant. It connotes that 'settlements' are a remedy for only those which have already a fixed habitation.

10 This distinction in the settlement of wandering and settling tribes is not always borne in mind. Or rather, both the methods have been applied to all groups as they came handy to use. Perhaps in this respect the scheme of the Act was more liberal than the administration of it.

11 That brings us to the question of administration of this legislation. It is the administration more than the law itself which is of special importance in this case, for the law gives to the executive government vast powers in the framing of rules and their administration. I have presumed that it is within the province of this conference to discuss problems of penal administration as much as problems of law itself.

12 I have already brought out the importance of executive interpretation of the criminal tribes legislation. It was seen that the term 'tribe' as defined is capable of elastic interpretation. But more important than the question of interpretation is the standard of administration maintained in this respect, for much depends both on the rules which the executive government may have made and the spirit in which they are administered.

13 I shall illustrate what I mean by reference to some of the Criminal Tribes Rules in this province. In regard to the question of

registration of members of a criminal tribe it has been provided that a person who has been reasonably suspected of having been concerned in the commission of a non-bailable offence, the District Magistrate shall satisfy himself by a scrutiny of the evidence produced by the police that the suspicion is well founded. This requirement undoubtedly puts a check on the possible indiscriminate use of the provision by the police in as much as the District Magistrate must be himself satisfied in each case about the suspicion. But it leaves the person affected by this provision out of the picture. A person convicted of an offence has had his opportunity of attempting to prove his innocence to the satisfaction of a court. A person reasonably suspected of having committed an offence gets no opportunity to have his say. It is therefore necessary that the District Magistrate should hold a quasi-judicial enquiry calling upon the individual concerned to show cause why he should not be reasonably suspected of having committed a non-bailable offence. That at least gives him an opportunity of approaching a high executive authority.

14 Then there is the question of restrictions on the movements of registered members and the obligation on them to report at fixed intervals, or what is popularly called the 'hajri' system. Perhaps no part of the criminal tribes administration is so irksome to the tribesmen as this. The restrictions are clearly necessary granting the necessity of criminal tribes legislation itself but it must not be forgotten at the same time that the ultimate aim of the legislation is to wean the criminal tribesmen away from a life of crime. That aim cannot be achieved by condemning a man for his life to irksome restrictions, without providing for some incentives in the system for a person towards betterment. Means of maintenance should also serve the purpose of providing them with occupational training which will equip them in due course for taking their place in normal society. There are thus problems in a settlement administration which have purely economic aspects as well as reformative.

15 It is not always easy to provide remunerative employment to settlers within a settlement itself. It is not only the adult members of an interned tribe but whole families which have to be maintained. But even otherwise it is not desirable to confine the settlers to a colony of themselves and keep them aloof from the society outside with which they are one day to be assimilated. Outside employment is therefore

a natural and necessary part of settlement administration. It is by such controlled contacts that it is hoped to gradually train up the criminal tribesman to lead a life as a law abiding member of society.

16 The outside contacts, however, bring in other problem in its wake. Out of the settlement, the tribesman is free to mix with the people in general but back in his settlement for the night means a different life altogether. It is only to be expected that the psychological reactions of this situation will not be always happy, the man will fret in the settlement and will yearn for a completely free life perhaps before he and his family or group is ready for it.

17 It is here that there is considerable scope on the one hand for undesirable outside activities and on the other for tact and broad-mindedness on the part of the settlement manager. It is an useful expedient in such cases to provide that those settlers who are found in any way to abuse the privilege of free outside contacts should be deprived, for some time at least, of such freedom. It then becomes necessary to provide such people with labour within the settlement itself or under strict supervision outside it.

18 Within the settlement it is necessary to provide the settlers with normal corporate life as far as possible, particularly with the objective that the training imbibed in the settlement will be carried with them when they eventually emerge free. The use of whatever leisure is available then becomes of the highest importance. Sports, entertainments, library, and civil administration of the settlement itself should fill this gap of leisure.

19 Let me revert to the economic factor which is so important in the settlement administration. I shall only illustrate here by one or two instances how tribes when given stable means of maintenance were weaned off their previous modes of criminal existence.

20 The Chhapparbands originally were a wandering tribe throughout India. On the break-up of the Moghul Empire, they took mainly to counterfeit coining for subsistence. In addition they were accustomed to steal ponies and sell or hire them out in pre-railway days. It was a wandering tribe and was one of the first to be interned, as early as 1916. Whereas it was estimated that in 1909, out of 900 adult males, only 50 passed an honest livelihood, by 1937 there

were only 9 registered members of the tribe. The tribe as a whole had merged itself in society in general and with the recent cancellation of the notification governing it, it has ceased to be a "criminal tribe"

21 Similarly the Chharas near Ahmedabad who were carrying on depredations on the urban population are now settling down to lawful life after internment in a settlement being almost a regular part of the population of Ahmedabad.

22. Perhaps it is nowhere more important than in the administration of criminal tribes, that the spirit of the administration should be consciously enlightened. It is not enough that the rules should be liberal it is essential that their application must be imbued with a real desire to see that these unfortunate members of the society in general become assimilated with it, at as early a date as possible

23 Criminal tribes administration calls even more for the qualities of tact and broadmindedness and for a training in the fundamentals of social welfare work. The administration must therefore possess a cadre of well selected personnel who may have undergone or can be made to undergo the required training

24 I have been able in this short time to touch very broadly only a few questions which arise in the administration of criminal tribes Act. Those of you who may have read the report of the Criminal Tribes Committee appointed by the Government of Bombay will have no doubt noticed that the Committee has dealt with all these questions. I claim no authorship for the suggestions in this paper. The Committee which was presided over by the President of this conference Mr K. M. Munshi who was then Home Minister of the Bombay Government has made detailed recommendations on this subject to which I would like, before I conclude to invite your attention

The Past and Present of the Criminal Tribes of Punjab

By

SARDAR BAHADUR SARDAR HARI SINGH,
(Retd Deputy Commissioner of Criminal Tribes, Panjab)

THE Criminal Tribesmen, or rather their forefathers were once members of the society. They were ex-communicated owing to some social crime or were driven away to the forests owing to some such reason and have since been shunned and hated by the society. Owing to this unsympathetic and vindictive attitude, which continued for ages, they had neither any opportunity to obtain education nor had any chances for earning an honest livelihood. The result was that the members of these tribes and their progeny were thrown upon their own resources for their subsistence and lived on their own resources so long as it was possible for them to do so. However as needs increased they found these resources inadequate and this want ultimately developed into a habit of retaliating upon the society by continued depredations. This habit of divesting other people of their belongings came to be regarded as their lawful or rather unlawful occupation and it was continued for ages.

Under the existing law any tribe, gang or class addicted to the systematic commission of non-bailable offences can be brought under the purview of the Criminal Tribes Act and fresh gangs are now and then being added to the list while those who reform and take to honest means of livelihood are being discharged from the operation of the Act.

The criminal tribes can therefore be divided into

- (a) Genuine Criminal Tribes i.e., those whose traditions and early history draw them inevitably to the practice of crime, just as sparks must fly upwards and who are inherently criminal
- (b) Artificially constituted criminal tribes i.e. those tribes which have been found to be criminal and have been dec-

lared as such under the Provisions of the Criminal Tribes Act.

Into the former class fall:—

- (1) Baurias
- (2) Sansis
- (3) Harnis
- (4) Pakhiwaras
- (5) Minas
- (6) Tagus
- (7) Bilochis of Karnal
- (8) Bhats

These tribes are divided into hundreds of sub-castes and subdivisions and besides the regular tribes indicated by me they possess many local names which do not necessarily carry with them any vital difference in characteristics or customs.

The latter class is composed of —

- (1) Dhillons
- (2) Mahtams
- (3) Bars and Tharanas
- (4) Dher Kharals
- (5) Valana Jats
- (6) Giloi Bilochis
- (7) Nur Mahrams and Akla Hayats

The crime committed by the latter class is not of so serious a nature nor of such peculiarity as to warrant deep research. They have no criminal traditions to cherish and to take pride in they do not wander far in search of crime and they are not numerically important enough to have a widely extended criminal organisation. Their complete reformation is a matter of time only and of changing circumstances.

In this paper I propose to take up the Baurias and Sansis only who owing to their numerical strength and also owing to their daring exploits in the past claim foremost position among the Criminal Tribes of Punjab. Every Bauria claims as his place of origin the Rajput stronghold of Chitaur in Udaipur State and dates the degradation of his race from some catastrophe to the Rajput power which may possibly have been the siege and subsequent sack of that city by Allaud Din Khilji, king of Delhi. Though the tribe claims Rajput ancestry there is traditional evidence that the Baurias stood in the relation of vassals

to the Rajputs of Chitaurgarh serving the latter as Bandukchis or skilled musketeers in the same way as the Bhils supplied the archers, and the Aheris the professional swordsmen of the Rajput fighting line.

When the quality of the Rajput Princes and the nature of their times are considered, it is natural to conclude that their mercenary soldiers were employed as much to keep their masters' coffers filled by irregular enterprise as in legitimate warfare. The suggestion is not indeed incompatible with later history. The last sovereigns of the Moghul dynasty are known to have harboured gangs of Baurias whose services they employed in the acquisition of property upon which they had no legal claim and to have disbanded these said desperadoes only when the latter took upon themselves to plunder and raid without the Royal permission.

After the tribe was driven from Chitaur on the downfall of the Rajput power the Baurias took to jungles in order to escape from persecution at the hands of the Rulers whom they had defied and were compelled by necessity to hunt wild animals for food in which pursuit they made use of no lethal weapon and trapped their game with the aid of nooses made from creepers, (BANWAR) the Hindi name for such a noose is said to have given to the tribe its distinctive title which it retains up to this day.

To avoid detection the tribe was gradually split up into small gangs which disguised as sadhus and jogis used to travel long distances with the object of committing crime. Parties of Baurias were frequently met in the Punjab and throughout India wearing coloured garments and carrying the bowl, tongs, and other paraphernalia of the ascetic. While so disguised they wore caste marks upon the forehead so subtly differing from the regular tikka that while enabling the wearer to pass safely as a member of the sect whose role he has temporarily assumed, it revealed him to be a Bauria only to a passing member of his fraternity. Holy men are rarely interfered with by the Police in India excepting upon well founded suspicion, a fact which accounts for the large measure of impunity which Baurias and other similar tribes undoubtedly enjoyed in the past.

Next come the Sansis the hereditary robbers of the northern India who are numerically as important a criminal tribe in Punjab as Baurias. They have much in common with the Baurias. Both tribes are out-cast, both profess to be of Rajput extraction, their customs at

births, deaths and marriages assimilate to those of Hindus. They are roughly divisible into two branches, the wandering and the settled. They both show the same passion for gypsy life, the same predilection for crime when on road, the ranges for their crime are equally comprehensive and the stratagems to escape detection are equally ingenious and somewhat alike.

The origin of Sansis like Baurias is open to conjecture. All Sansis claim descent from a common ancestor named Sans Mal who had two sons Mahla and Bidu. These two brothers founded the race of Sansis which exist at present throughout India under different local names. The forbears of Sans Mal are unknown. There is a tradition in the tribe to the effect that a Rajput prince while hunting came upon a deserted infant lying in the jungle. He enquired of his retainers whether the child still lived, using the words 'Sans Hai' and on receiving an affirmative reply took the child home and reared him as his son naming him Sans Mal in memory of the incident. The tradition further relates that the patron Prince in saving Sans Mal from death by exposure appointed him and his progeny after him the bards of his house. It may be noted that a sect of Sansis known as Birtwani Sansis still act in the capacity of bards to some Jat and Rajput tribes in Punjab while others continue to live as freebooters.

The language of Baurias is a corrupt form of Cujrati and still continues their distinguishing feature throughout India which makes it difficult for the members of a Bauria encampment to keep their identity secret. It has a fair claim to be considered a dialect of the language of their origin and is known by different names among different sections of the tribe. The dialect as well as the special marks which the Bauria gangs leave on camping grounds and roads when on criminal enterprise are meant to facilitate association in crime of the members of the tribe and though the conditions have now changed considerably they are still used for this purpose by the members of the tribe still engaged in criminal pursuits. The housebreaking implement of the Baurias is called *Cran Das* just as Harnis call it *Rizak Deva*.

The vocabulary of Sansis has but a slight claim to be regarded as a dialect of the language of their origin. In the ordinary conversation they use mostly the language of the part of the country in which they live though slightly inclined towards Hindustani and mixed here and

there with Urdu words, but when the purpose of the conversation is to be kept secret they use a manufactured language with peculiar accents which is quite unintelligible to others and which is a deliberate fabrication for the purpose of aiding and abetting crime. In some cases special words have been manufactured while in others a semi systematic substitution of certain letters for others is resorted to and such manufactured language is called by them their Farsi.

Sansi gangs also use ingenious signs to convey messages to their associates as regards the direction in which they are marching and the strength of their gangs. Such marks convey no meaning to others who may happen to see them.

The members of the genuine Criminal Tribes maintain an efficient intelligence department of their own. They possess marvellous means of communication which are faster than mail and which are seldom at fault. On one occasion I was surprised to get information relating to the whereabouts of an absconder of the Reformatory Settlement from a prisoner in the Central Jail of Lahore who had been imprisoned long before his escape. Before the settlements came into existence members of the criminal tribes seldom if ever resorted to the law courts for the redress of their internal grievances which were referred to the tribal panchayats or at the annual gatherings of the clans. Fines and penalties were fixed for certain moral and other offences, and where evidence was doubtful or lacking trial by different forms of ordeal was adopted.

CUSTOMS AND SEX HABITS

The word custom signifies a long established practice or usage resting for authority on long consent. The orientals it is said are creatures of custom. The members of the Criminal Tribes go a step further. They are slaves of customs and traditions which constitute their unwritten law and which is persistently adhered to in spite of the long strides which science has taken during the last few decades to remove doubts and fears imposed upon humanity by ignorance and time old superstitions.

The Sansis are by far the most important criminal tribe in India from the point of view of numbers as well as systematic and daring commission of crime. They were the first tribe to be brought under the operation of the Criminal Tribes Act in 1873. Their customs at

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birth, death, religious worship, betrothal and marriage are peculiar to them and often fantastic.

The religion of Sansis is of a primitive mixed and debased nature. The forms as well as the substance are mostly borrowed from Hinduism. The shadowy conception of a great God with them takes equal place with the cult of demonology and the most prominent feature of their religion is hero and ancestor worship and the propitiation of the Malignant dead. They say Ram Ram morning and evening and worship Guga Pir. They cook rice in honour of Jowala ji Kalka Mai or some other goddess and promise offerings for the fulfilment of their desires. Fatta Shahid has a Mari or shrine on an ancient mound in a Brahman village a little north of Malla in Sialkot District. Fatta was one of the Mukhtars of Malla and while standing sentinel during a burglary was killed by his sister's son in the confusion caused by an alarm. So he is revered as a shahid or martyr and up to this day before setting out on a thieving expedition the Sansis make offerings at the shrine.

A Sansi would rather go to jail for an offence committed by him than take a false oath on the name of any one of their numerous saints.

The Sansis are great hunters, catching and eating all sorts of wild animals, both clean and unclean, and they eat carrion.

They are known to worship sword and an oath taken on a tulwar is popularly said to be binding on a Sansi. If he is asked to place his hand on its hilt he will not touch it or pick it up if he is speaking falsely. He will do so only if he is telling the truth. Among some castes of Sansis friendship is sworn on the sword by one man placing the sword between himself and his friend. The latter removes it and the tie is complete. The reverence for the sword on the part of the Sansis is sometimes quoted as a proof of their Rajput origin. In the census 11 per cent of the Sansis were returned as Muslims, a few as Sikhs, and the rest as Hindus.

The birth and death customs of the Sansis mostly correspond with those observed by Hindus on similar occasions.

The Sansis are much under the influence of their aged women and the traditions cherished by them have proved great obstacles to the reclamation of this tribe. The various Hindu Mohammedan and

Christian societies have made attempts to convert Sansis but so far as real conversion of mind is concerned almost all of these attempts have proved abortive and fruitless. Pecuniary gain, prospects of exemption from the operation of the C. T. Act, or some other material gain may induce a Sansi to accept the form of another religion for some time but in his heart of hearts a Sansi is a Sansi first and any thing else afterwards. The only result of such conversion is that the Christian, Hindu, and Mohammadan deities are degraded into occupying positions in the Sansi demonology similar to that held by Sansi Mal Mahla and Bulu.

The sole importance of the ancestral deities of Sansis lies in their ability to exert evil influence on the fortunes of their descendants provided that due ceremonies are not performed at important events such as births, marriages and deaths. The question of what happens to a person after his death is still an unsettled one amongst the Sansis and the germs of enquiry have not yet led him to formulate any definite theories on the subject. The character and conduct of a man during his lifetime are not considered to be factors which determine the perpetuation of his existence after death. His immortality as an evil spirit is determined only by the outward manner and circumstances of his death. The inhabitants of the immaterial world are entirely spirits of a malignant type who by the unclean or unnatural manner of their death are condemned to haunt their former abodes and enter into the bodies of living beings. Spirits possessing a kindly and benign influence are said to be non-existent.

The faith of the Sansis in treatment of such ailments as insanity or vacancy of mind by magic instead of ordinary medicine can be better understood by the following instance which occurred in the Moghulpura settlement some years back. A Kuchband Sansi was suffering from extreme debility and vacancy of mind. The settlement Doctor was treating the case but it was subsequently found that the medicine brought from the dispensary was thrown away and attempts were made to requisition the services of a local wizard. For three nights a special watch was kept to prevent such attempts which, it was feared would be dangerous for the patient owing to his extreme weakness. On assurance given by the elders the watch was removed on the fourth day. At midnight the guard outside heard the muffled sounds of a drum and cymbals. He ran in towards the source of the

sound. The man engaged in the performance of the ceremony also heard the approach of his footsteps and the patient was made hurriedly to perform the third round around the Magic square. The strain was too much for the poor patient and he collapsed. The Doctor hastened to the spot but found him dead.

The moral code of men who are more enamoured of their nocturnal excursions than of the chastity of their women must necessarily allow a good deal of latitude to the women who are left to themselves when the male members leave the home for their adventurous pursuits. To ensure purity of blood in the lineage and to reduce the chance of external encroachments the Sansi code allows full liberty to the brother particularly the younger brother with the wife of an elder brother when the latter leaves the home for a long excursion or is sentenced to a term of imprisonment. Responsibility for the cost of maintenance is however an essential condition which accompanies this privilege. However here as elsewhere the question of choice plays an important part and on some occasions the absentee on his return finds to his utter dismay that the excursion has cost him his better half. In most cases however he traces her and with the assistance of the Panchayat charges heavy penalty for the temporary use of her made by the offender. The children borne by her if any are invariably retained by the paramour. The Sansi women when young are handsome and contract intimacy with Zamindars, Shopkeepers, Sahukars with whom they come in contact with the knowledge and implied consent of their parents and gradually fleece their paramours of their wealth and possessions. When continuation of the connection is no longer considered desirable on physical or other grounds the male members are invited to visit the house at night to finish the job. The money so gathered is converted into jewellery and forms the dowry of the woman when she marries.

The betrothal ceremony of the Sansis is almost similar to that of other Hindus. Some of the customs practised by them at the time of the marriage show some incipient understanding of the universal principle which governs the reproduction of the species in both the vegetable and animal world. On the marriage night before daybreak some sherbat is mixed in a pitcher. A pit is then dug in the courtyard of the house and the branches of a fruitful tree planted in the four corners. Some of the sherbat and a pice are placed in the pit. The

bridegroom takes the pitcher on his head and walks seven times round the pit. The bride follows accompanied by her mother's brother. After this the bridegroom gives some sherbat to the bride and the remainder is then divided among those present. The practice seems to indicate some comprehension of the universal law of reproduction. The same god or goddess, embodying the principle of reproduction, who causes the trees to be fruitful and to bring forth, is being propitiated to bestow the blessing of children on the marriage which has just been celebrated. The actual marriage ceremony is also peculiar. The bride is covered by a bylet on which the bridegroom sits while the nuptial rites are performed. The Gana (sacred thread of the wrist) the salu (a red cloth) Mahindi (leaves of a bush for colouring hands and feet) and one rupee are sent to the girl's parents a few days before the wedding. On the day of the ceremony the procession halts on the way to the bride's house and arranges the Lakharie to say what amount should be paid to the girl's parents. After this has been settled the procession proceeds to the girl's house. At the time of the marriage the bridegroom's parents give seven sheep, a donkey, and some wheat to those of the bride. The significance attached to number seven by Sansis and hundred races is peculiar. The bride and bridegroom of Kuchband Sansis circle seven times round a pole and blow seven times on a coil of fire when the marriage ceremony is performed.

These and hundred other antique beliefs, social and moral customs govern the conduct of these people even up to this day when their lives have been revolutionised in settlements and when their criminal tendencies and evil habits have been eradicated to a considerable extent.

In the Moghul period and even during the early period of British Rule there was no definite scheme for the administration and much less for the reformation of criminal tribes. Wandering gangs were considered unwelcome visit and were driven away from place to place throughout India and even across the sea to Europe, and in the course of the excursions they helped themselves with what they could lay their hands upon. As a result of this the members of the criminal tribes, particularly the wandering sections made the deserts of Bikanir and Bahawalpur their base of operations and the fertile plains of Punjab formed their favourite hunting ground.

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This menace increased gradually in proportions and in the first decade of this century the trouble grew so acute that it was considered absolutely necessary to apply an effective check to their depredations. Criminal tribes act of 1911 was brought into operation in Punjab in 1914. The Punjab Government appointed a committee to investigate the conditions of the wandering and settled criminal tribes of the Punjab with a view to prepare a scheme for the proper control of these tribes. As a result of this a general round up was arranged in January 1917 and settlements of three classes were organised at various places to receive members of Criminal Tribes, whom it was not considered safe to leave in the districts. The Reformatory Settlement at Amritsar was meant for the worst characters and the Industrial Settlements established at various places, were meant for men who could be trusted with a certain amount of liberty while the Agricultural settlements were meant for comparatively well behaved individuals, who for their complete reformation stood in need of means of livelihood and healthy influences to wean them from the evil habits to which they were addicted in the past. There are at present in Punjab one reformatory five industrial and twenty agricultural settlements which accommodate 12669 persons including males, females and children. Special staff is provided for those who are left in the villages and the worst villages who are a menace to the public peace are taken under direct control.

Changes from one class to another take place frequently as improvement in the conduct of the detainees becomes visible and most of the men who are now working in the industrial and agricultural settlements had to pass through the stringent control and disciplined life in the reformatory settlement at Amritsar.

The settlements though well advanced still at times present problems which baffle all intelligence. Amritsar Reformatory which had a strength of nearly 800 in the past now accommodates nearly 200 male adults of the worst character and their females and children has of course always been the most difficult to manage and requires consummate tact and untiring energy for its management. Without resorting to flogging or any other corporal punishment and despite the inevitable irksomeness of detentions they have not only to be weaned from the criminal and other evil habits, but have also to be made to earn their own living while they are there. Almost every day the

controlling staff is confronted with difficulties, which have to be solved somehow. The majority of the inmates of the other Settlements, are also men who have passed through Reformatory, but having reformed to a considerable extent they present less difficult problems

Paid preachers have always been employed in the Amritsar Reformatory, but preaching in one form or another is also provided in all places and as a result of this thousands of men and women who belonged to no recognised religion or were nominally so called, who had no morals worth the name and who were ready to cut the throat of another merely for the sake of a meal, who were a prey to superstitions, and many of whom moved about almost half naked under the shelter of reed huts, now present to all visitors, and particularly to those who know their past, a most refreshing appearance. A large number of them have adopted religion in one form or another and offer their prayers regularly. The settlers have at their own expense built mosques at three places, a Gurdwara at one place and a mandir at another and the average daily attendance at these religious places is even better in free villages. Superstitions forbade some the building of, or residing in roofed houses whereas the tradition of others tabooed their taking milk or other fresh food or even bathing. Now these very people live in well built houses, which they keep clean and tidy. Men, women and children bathe regularly, wear decent clothes and take fresh well cooked food. Truth when it related to their criminal activities was regarded as a serious crime and was attended by serious consequences, such as ex-communication, heavy fine etc, but now in many cases more reliance can be placed on the statements of these men than upon that of others. There are informers in all communities, who keep an eye on their brethren and report their criminal tendencies when noticed and who also help in catching absconders.

The settlement of their social disputes which if left unattended is apt to lead to a breach of peace in the Settlements, taxes the ingenuity of the staff almost every day, particularly owing to their antique beliefs and strange moral and social customs. An idea of the moral standard of some of the wandering tribes may perhaps be gathered from the fact that a Chhimar Bhangali woman would not hesitate to confess in the presence of her husband that she also bore some children before marriage. A woman of the same tribe sometime back flung a

sickly child at the face of her husband and said that she would go and mate with a man, who could produce better children. These and hundred other customs constitute a code of their own. Conferences have already been convened to eradicate these habits and marked improvement is visible, but only the next generation can be expected to shake them off entirely.

The results of this bold experiment are quite beyond the expectations of even the originators of the scheme. Of 33,000 male adults who were originally registered nearly 27,000 have so far as a result of complete reformation been released from the operations of the criminal tribes Act and are now living among others as free citizens and subsist on the proceeds of their honest occupations which they have adopted. It is admitted on all hands that systematic criminal operations on the part of the hereditary Criminal Tribesmen have now become a thing of the past in Punjab and in the words of these criminals themselves what could not be achieved by the jails has been achieved by the Amritsar Reformatory. The wandering Criminal Tribesmen are no longer a terror to the country side. All those who were brought to the Amritsar Reformatory were once a curse to the society. Of these no less than 2266 have been released after complete reformation and are now living as honest men. Only a very few of them showed tendency towards criminal life and had to be brought back to the Reformatory.

All Criminal Tribes Settlements have Boys and Girls Schools. 1529 boys and 1077 girls are now receiving education. A large number of them have passed the Primary Examination and among them there are some who have passed the Middle and Matriculation Examination. Compulsory education is also being enforced throughout the Province and no less than 5682 children of Criminal Tribes are attending the village schools. A large number of stipends is offered every year to encourage education among these children, most of whom are unable to meet the cost of school requisites.

No less than 6849 boys and 1721 girls have passed the First And Examination of the St. John Ambulance Association and the Boy Scouts and Girl Guides in all Settlements as well as in other districts.

All the Settlements are equipped with Co-operative Supply and Credit Societies. I remember an interesting incident in this connection.

tion Short time before the Shahdara Settlement was established complaints were received from Shahdara town relating to the members of Criminal Tribes, who visited the bazaar with the object of purchasing the necessities of life. It was decided to locate a shop in the Settlement This annoyed the settlers whose tradition tabooed shopping. The leading men from among them came to me in a body to represent that if the shop is started in the Settlement it will disgrace them in the eyes of their ladies, who considered it below the dignity of their male members to buy anything from a shop and who prefer their bringing their requirements as a result of their nightly excursions It was with great difficulty that they were reconciled to the idea of having a shop in the settlement and these very men are now managing their cooperative shops most successfully in some places and have large assets to lay by for their future requirements

PENOLOGY IN INDIA

PART III

INDIAN PENAL REFORM LEAGUE

Resolutions passed by the Conference on Saturday, February 24, 1940 at its afternoon session

I—Resolved that the following constitution be and the same is hereby adopted

(1) Name. The name of the League shall be the Indian Penal Reform League

(2) Aims and Objects. The aims and objects of the League shall be —

(a) a wider and scientific study of:

(1) delinquency and crime and the methods of effectively dealing with them, and

(2) Criminal Law and procedure and the methods of effective enforcement of such laws,

(b) the improvement of penal, and promotion and improvement of correctional and institutional education centres throughout the country,

(c) the co-ordination of efforts of individuals and organisations interested in penal reform,

(d) the creation of public opinion in favour of penal reform including the formation of —

(1) penal reform groups in the legislatures,

(2) associations and groups having for their object penal reform, and,

(e) for the purposes aforesaid, to do all such acts and things as may be necessary including

(1) the holding and management of funds and property;

(2) the acquisition of rights and privileges necessary or conducive to furthering the aims and objects of the League,

(3) the management, improvement, disposal and sale of all and any parts of the property of the League

(3) Membership. The League shall consist of

(a) Contributory members who shall be the Provincial Governments and the Indian States. They shall pay a minimum annual subscription of Rs 240

(b) Associate Members who shall be Corporations, Asso-

ciations or Institutions engaged in social welfare or civic work. They shall pay a minimum annual subscription of Rs. 24.

- (c) Individual Members who shall be persons in sympathy with the aims and objects of the League. They shall pay an annual subscription of Rs. 6.

II—Resolved that a Council be formed of the Indian Penal Reform League which will consist of the following members.

- (a) the members of the Provisional Committee
- (b) official and non-official delegates who have taken part in the proceedings of this Conference
- (c) all persons who may be approved of by the Executive Committee

and who shall have paid their annual subscription of Rs. 6

III—Resolved that the President be and is hereby authorised to nominate and form an Executive Committee which shall work until the proper Executive Committee is elected under the Constitution.

IV—Resolved that the Executive Committee shall, subject to the general control of the Council take such steps as may be necessary to carry out the aims and objects of the League. The Executive Committee shall prepare supplementary provisions of the Constitution and place it before the Council for its approval. On its being approved by the Council the supplementary provisions of the Constitution shall come into effect.

V—Resolved that with a view to further the aims and objects of the Indian Penal Reform League the Committee be empowered to publish a periodical to serve as an official organ of the League

VI—The Executive Committee is hereby authorised to raise funds and to incur such expenditure as may be necessary in order to carry on the activities of the League

VII—Resolved that members of the Reception Committee formed in the United Provinces who have paid their Reception Committee Membership Fee be enrolled as Individual Members of the Indian Penal Reform League for 1940.

MESSAGES

I am glad to learn of the steps that are being taken to convene an All-India Penal Reform Conference. I should like to associate myself with this endeavour. Crime, it is well-known now, is not the result of an original sin in a criminal but is much more a product of his environment and his lack of opportunity and training. In a sense society is to blame for producing the criminal. It is time, therefore, that society sought to understand this question and to deal with it scientifically. A proper social environment and structure should in fact almost eliminate the criminal or, at any rate, should reduce his number greatly. That perhaps is not immediately feasible, but undoubtedly much can be done towards that end. I wish the Conference every success.

(Sd) JAWAHARLAL NEHRU

Lucknow, May 25, 1939

The importance of Reform in the condition of prisoners cannot be exaggerated. The old controversies about the nature and theory of punishment are dying down and emphasis is being increasingly placed on the humane treatment of prisoners and their improvement. Those that have proved themselves to be dangerous to society by their anti-social acts have to be detained within prison walls for they must be deterred from similar action in the future, but the punitive view of prison life has long been abandoned. Society recognises that crime is to no small extent a product of its own incomplete attention to the needs and surroundings of its citizens. In these circumstances stress is laid on the prisoner's physical well-being, his education, and on the provision of opportunities to improve himself. Discipline is undoubtedly a paramount consideration, but with discipline secured the main question is how to help in the prisoner becoming a free and useful citizen when he comes out of his confinement.

In the Punjab the present Government has steadily pursued during the past three years the policy of

- (i) releasing old and infirm prisoners on compassionate grounds when it is clear that a prisoner is not likely to be a danger to society. Hundreds of prisoners are thus released every year,
- (ii) better organisation of industries so as firstly, to discard all dehumanizing labour and secondly, to secure possibility of earning power on release,
- (iii) vigorous adult education among prisoners, and
- (iv) introduction of many small measures to make physical life in jails less harsh and irksome.

Finance here as in other fields places serious limits on our activity, but the general outlook is all in support of advanced ideas of penal reform. I, therefore, whole-heartedly welcome the inauguration of this Conference and wish it all success. I hope its deliberations

would lead to the formulation of a policy of prison reform in the circumstances of this country because we cannot directly borrow lessons from the west.

(Sd) MANOHAR LAL,
Finance Minister Punjab.

Dated Lahore, February 18, 1940.

THE AMERICAN PRISON ASSOCIATION

Officers 135 East 15th Street, New York City

69th Annual Congress, New York City

August 22, 1939.

The Secretary
All India Penal Reform Conference,
Lucknow

I am honoured and pleased to be able to extend on behalf of the officers, members and friends of the American Prison Association greetings to the delegates to the first All India Penal Reform Conference convened at Lucknow.

As General Secretary of the Association it is indeed a pleasure for me to express our heartfelt wishes for a profitable Conference. We are especially anxious that your sessions be successful and thereby constitute an outstanding example to other nations of how one great country in the midst of rumours and talk of war and conflict does not neglect her own internal problems.

The American Prison Association is generally regarded as the spearhead of action and the outstanding force for progress in the field of penology in the United States of America. The work and influence of the early founders back in 1870 lives vividly in the minds of today's members and it is with gratification that we recall the establishment of what is now the International Penal and Penitentiary Commission.

We are planning now for the 69th annual Congress of the Association, which is to be held in New York just a few days prior to your Conference and I know that that gathering would want me to express to the first All India Conference their complete and whole hearted co-operation. We will anticipate with interest the report of your discussion because we feel that you will agree that no group has yet found wholly adequate solutions to the myriad of problems inherent in the work to which we are devoting our lives. The solution will only be found through co-operation and mutual helpfulness and we look to you for guidance as you look to us.

We have been honoured to have had many Indian citizens as our official guests some of them members of your reception committee and we hope that any of your delegates contemplating visits to this country will accept its invitation to allow us to extend the courtesy of the Association.

We wish you every success for fruitful meetings and again express our desire to be of help and our honour at being privileged to extend this word of greeting

Very sincerely yours,
E R CASS,
General Secretary.

COMMISSION INTERNATIONALE PENALE ET
PENITENTIAIRE

Bureau Permanent
(Fondé en 1926 Berne)
Directeur Ernest Delaquis

BERNE OBERWEG 12, October 2, 1939.

The International Penal and Penitentiary Commission has heard with deep interest of the All-India Penal Reform Conference which is to be held at Lucknow in October

We are all aware of the peculiar difficulties that have surrounded the prison problem of India in the last few years. It is the experience of many countries that Penal Reform is, to a large extent, dependent upon the degree, in which public opinion can be stimulated to take an interest in the problem. We hope, sincerely, therefore, that one of the effects of this conference will be to remind the people of India that the task of dealing with offenders against the law is one of the most serious social problems of modern times and that it demands the closest attention of all Governments and the adequate financial support of their Treasuries.

We wish the Conference every success and trust that the fruits of it may be abiding.

In the name of the Commission
(Sd) ERNEST DELAQUIS
General Secretary.

NATIONAL ASSOCIATION OF PROBATION OFFICERS

47, Whitehall,
London, S W 1
18th August, 1939

The Secretary
All-India Penal Reform Conference,
Council House,
Lucknow.

Déar Sir,

I have received your letter about the first All-India Conference on Penal Reform and I gladly respond to your invitation to send a message to the meeting. I do this the more readily because for a long period I worked in the courts of South Africa and had contact with those Indian people who fell within the net work of law.

In recent years there has been a very rapid advance in our understanding of the causes and scientific treatment of delinquency and the Criminal Statistics of Great Britain reflect the beneficial results that have accrued from the application of this new knowledge.

In 1907 the year of the Prohibition of Offenders Act 751,000 offenders were charged in the Courts of England and Wales and 186,000 of them were sent to prison. In 1937 850,000 offenders were charged but 475,000 of them were charged only with traffic offences. Of the grand total of 850,000 only 29,462 were sent to prison.

The primary object of criminal legislation is to protect the community against crime. But the most effective way of achieving this is to understand and to heal the individual offender at the earliest possible stage in his career. Recent penal legislation in Great Britain has been based upon this fact the underlying principle of the Children and Young Persons Act of 1933 (Section 44) is stated in the following terms

"Every Court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training"

The Criminal Justice Bill now before Parliament extends this principle to older offenders for it enables the Court (Sections 2 and 17) to make full social inquiries into the circumstances or home surroundings of any person with a view to assisting the Court or determining the most suitable method of dealing with his case and provides for medical and mental examination and necessary treatment at the public expense

It is very much to be hoped that these humane provisions will soon be adopted in your great country and in all parts of the British Empire in the interests both of the State and of those individual citizens who stumble and fall.

The Clarke Hall Fellowship for development of social work of the Courts and the National Association of Probation Officers, of both of which I am Secretary send you cordial greetings and heartiest good wishes for the success of your Conference

I am sending you three small parcels of literature which I hope you may find useful for distribution at your Conference and if you think I can be of use at any time in supplying information about the social work of the Courts I hope you will not fail to write to me

Yours sincerely

(Sd.) H. L. NORMAN

Secretary Clarke Hall Fellowship and
National Association of Prob. Officers.

ALL-INDIA PROVISIONAL COMMITTEE

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Gopinath Suvastava, M.L.A.,

Formerly Parliamentary Secretary Jails and Public
Information, Government of the United Provinces,
LUCKNOW

Secretary—

Dr K. G. Rama Rao, M.A., Ph.D (Lond.)

Editor The Penal Reformer and Assistant Secretary
United Provinces Prisoners Aid Society, LUCKNOW

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